

## ORAL ARGUMENT NOT YET SCHEDULED

No. 22-1081 and consolidated cases

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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STATE OF OHIO, et al.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

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On Petitions for Review of Final Action  
by the U.S. Environmental Protection Agency

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**INITIAL BRIEF OF RESPONDENTS**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

**A. Parties and Amici.**

Except for the following, all parties, intervenors, and amici appearing in these consolidated cases are listed in the Brief of State of Ohio, et al. (ECF No. 1969895):

*Amici for Petitioner:* The Two Hundred for Housing Equity, Americans for Tax Reform, American Commitment, Caesar Rodney Institute, California Policy Center, Energy & Environment Legal Institute, Freedom Foundation of Minnesota, Center for the American Experiment, Institute of Energy Research, Institute for Regulatory Analysis and Engagement, Rio Grande Foundation, Thomas Jefferson Institute for Public Policy, Western States Petroleum Association, National Federation of Independent Business, California Asphalt Pavement Association, American Trucking Associations, Inc., National Tank Truck Carriers, Inc., California Manufacturers & Technology Association, California Business Roundtable, Texas Oil & Gas Association, Louisiana Mid-Continent Oil & Gas Association, Petroleum Alliance of Oklahoma, Texas Independent Producers and Royalty Owners Association, Texas Association of Manufacturers, Texas Royalty Council, Owner-Operator Independent Drivers

Association, Inc., ConservAmerica, The Sulphur Institute, and Western State Trucking Association, Inc.

*Amici for Respondent:* South Coast Air Quality Management District

**B. Rulings Under Review.**

The agency action under review is entitled, “California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision,” 87 Fed. Reg. 14332 (Mar. 14, 2022).

**C. Related Cases.**

There are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

/s/ Chloe H. Kolman

CHLOE H. KOLMAN

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## GLOSSARY

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|----------------------|---|
| 2013 waiver          | “California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California’s Advanced Clean Car Program and a Within the Scope Confirmation for California’s Zero Emission Vehicle Amendments for 2017 and Earlier Model Years; Notice,” 78 Fed. Reg. 2112, 2126 (Jan. 9, 2013) |
| EPA                  | U.S. Environmental Protection Agency  |
| EPCA                 | Energy Policy and Conservation Act of 1975  |
| Fuel Br.             | Brief of American Fuel & Petrochemical Manufacturers, et al., ECF No. 1970360   |
| JA                   | Joint Appendix  |
| NHTSA                | National Highway Traffic Safety Administration  |
| Restoration Decision | “California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision,” 87 Fed. Reg. 14332 (Mar. 14, 2022)  |
| State Br.            | Brief of State of Ohio, et al., ECF No. 1969895   |
| Withdrawal Decision  | “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” 84 Fed. Reg. 51310 (Sept. 27, 2019)  |

## INTRODUCTION

Over 60 years ago, California designed the nation's first-ever vehicle-emission control program. That program reflected the State's interest in advancing new vehicle technology to abate its persistent air pollution challenges. When Congress later launched the federal program to regulate vehicle emissions, it generally preempted state regulation. But in Section 209(b) of the Clean Air Act, Congress made one significant exception: entitling California to seek preemption waivers to continue to operate its pre-existing vehicle-emissions program. Congress explained that grandfathering California's landmark program recognized both California's leadership and its "extraordinary" environmental challenges, and would benefit the nation by allowing California to accelerate new vehicle technologies that could be adopted nationwide.

This system has operated as Congress intended for 55 years. EPA has reviewed California's waiver requests under the deferential standard Congress directed, granting more than 75 preemption waivers aimed at addressing the State's severe air quality problems. And California's efforts under those waivers have driven innovation in vehicle-emission controls to the nation's benefit.

For 30 years, California's regulatory program has included a standard for the increasing use of zero-emission vehicles, which eliminate onroad emissions of smog-causing air pollutants and greenhouse gases. For over 15 years, California

has set standards regulating greenhouse gases from conventional vehicles. Both types of standards were included in California's updated emission standards for passenger vehicles, for which EPA granted a preemption waiver in 2013.

The 2013 waiver was not challenged by any party, so those standards governed automakers' obligations in California (and additional states that adopted California's standards under a separate statutory provision not at issue) for years. In its 2019 Withdrawal Decision, however, EPA reopened the 2013 waiver adjudication, claiming newfound bases to reject California's waiver for greenhouse-gas and zero-emission vehicle standards. EPA then determined in the 2022 Restoration Decision challenged here that the 2019 Withdrawal Decision had been improper, and so restored California's 2013 waiver.

Petitioners now claim that Congress's chosen approach to regulation of vehicle emissions – in place for over 50 years – is unconstitutional, that the Clean Air Act's waiver provision should be read to implicitly exclude regulation of greenhouse gases, and that the underlying California standards in the 2013 waiver are preempted by a separate statute. These assorted challenges to the Act and California's longstanding, successful vehicle-emission control program all fail.

Initially, Petitioners all either lack standing or fall outside the zone of interests of the waiver provision. Moreover, Petitioners' claims wholly lack merit. Their constitutional arguments are premised upon a categorical "equal

sovereignty” theory that would bar the differential preemption of states no matter how strong Congress’s justification, and even where, as here, differential preemption enhances federalism principles by expanding the regulatory options available to states. This theory is refuted by the Constitution’s text and over 200 years of historical practice and precedent. “Equal sovereignty” principles have never been construed to limit plenary Commerce Clause power, and such principles do not impose, in any constitutional context, a *per se* bar on permitting particular states to adopt standards to address regional considerations. Petitioners’ invented theory is also impractical, as it would undermine provisions across the United States Code and be unadministrable.

Petitioners’ remaining objections to the Restoration Decision also fail. EPA reasonably determined that the Withdrawal Decision was an improper exercise of reconsideration authority, so the Court need not reach Petitioners’ statutory theories to hold that EPA lawfully withdrew that decision. Those theories, meanwhile, ignore the wording, design, and operation of the Act’s plain text – asserting, contrary to all evidence, that Congress intended Section 209 as only a narrow, pollutant-limited carve-out, and invoking interpretative canons that are facially inapplicable to Section 209(b)’s preservation of state power. EPA reasonably concluded that the original 2013 waiver was legally sound, that the Withdrawal Decision was contradicted by its own factual record, and that EPA



appropriately executed the limited role designed for it by Congress. The Restoration Decision should be upheld.

### **STATEMENT OF JURISDICTION**

This Court has jurisdiction under 42 U.S.C. § 7607(b)(1), except that State Petitioners lack Article III standing. *See* Argument I, *infra*.

### **STATEMENT OF THE ISSUES**

1. Whether this Court should dismiss the petitions because:
  - a. State Petitioners lack Article III standing to challenge the Restoration Decision where they have failed to allege concrete economic harms, have supported vehicle electrification efforts, and fail to identify any concrete sovereignty injury; and
  - b. all Petitioners fall outside Section 209's zone of interests, where they are not regulated by that Section and seek to impede, rather than promote, its pollution-control purpose?
2. Whether Clean Air Act Section 209 reflects a valid exercise of plenary Commerce Clause power, where Congress provided a sensible explanation for not preempting California's pre-existing program, and Petitioners' categorical equal-sovereignty bar finds no support in constitutional text, practice, or precedent?

3. Whether the Restoration Decision properly determined that the Withdrawal Decision exceeded the proper bounds of reconsideration by reopening a settled adjudication to adopt a new policy position without considering longstanding reliance interests?
4. Alternatively, whether the Restoration Decision appropriately rescinded the Withdrawal Decision and restored the 2013 waiver where:
  - a. the original waiver appropriately assessed California's need for its vehicle-emission program rather than individual standards, consistent with the plain language of Section 209, congressional intent to give California expansive policy discretion, and congressional ratification of EPA's longstanding whole-program interpretation;
  - b. the record establishes, in any case, that California needs its greenhouse-gas and zero-emission vehicle standards to meet "compelling and extraordinary conditions" under any interpretation of Section 209; and
  - c. EPA appropriately limited its consideration of California's waiver application to the specified criteria in Section 209, when this Court has concluded EPA may reasonably do so?

## PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations not reproduced in the addendum to Petitioners' briefs are reproduced in the addendum to this brief.

### STATEMENT OF THE CASE

#### I. Statutory background.

##### A. Clean Air Act.

##### 1. Section 209.

The Clean Air Act establishes a comprehensive program for improving the nation's air quality. The Act generally preserves considerable flexibility for states to meet air quality goals. However, for new motor vehicles, EPA promulgates nationally applicable emission standards, 42 U.S.C. § 7521, and states are generally preempted from adopting their own standards, *id.* § 7543(a).

The Act includes one exception. Under Section 209(b), the EPA Administrator “shall ... waive application of [the preemption] section to any State which has adopted 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.” *Id.* § 7543(b). This is known as the protectiveness determination. The provision then provides the three bases for denying a waiver:

No such waiver shall be granted if the Administrator finds that –

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

*Id.* § 7543(b)(1). Only California regulated vehicle emissions before March 30, 1966, so Section 209(b)’s exception applies only to California.

Congress intentionally grandfathered California’s program to account for California’s pre-existing leadership and expertise in vehicle-emission control, as well as the State’s struggle to address extreme environmental conditions caused by its climate, topography, and large vehicle population. S. Rep. No. 90-403, at 33-34 (1967); H.R. Rep. No. 90-728, at 21-23, 96-97 (1967). Automakers had expressed concern that, absent preemption, they risked being subject to 51 different standards programs. *Id.*; *Engine Mfrs. Ass’n v. EPA*, 88 F.3d 1075, 1079-80 (D.C. Cir. 1996). Rather than mandate a single program, however, Congress allowed two programs of standards – one for the nation generally and one for California. *Id.* This, Congress explained, would prevent the free-for-all automakers feared while allowing California to continue its “pioneering efforts” to advance “new control systems and design,” benefitting the entire nation. S. Rep. No. 90-403, at 33. As anticipated, the federal government “has drawn heavily on the California experience to fashion and to improve the national efforts at emissions control.”

*Motor & Equip. Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1109-10 (D.C. Cir. 1979) (“*MEMA I*”).

The waiver provision was amended in 1977 to allow California to demonstrate the “aggregate” protectiveness of its standards, rather than requiring that each standard be at least as stringent as any federal counterpart. *See MEMA I*, 627 F.2d at 1110-11. This amendment ensured California could adopt particular standards less stringent than federal analogues (sometimes a technological consequence of other, more stringent standards), so long as the program *as a whole* remained at least as protective as the federal program. *Id.* Congress described its amendment as “ratify[ing] and strengthen[ing]” the waiver provision, and “affirm[ing]” that EPA should “afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.” H.R. Rep. No. 95-294, at 301-02 (1977).

Congress ratified the waiver provision (and EPA’s application thereof) again in 1990, re-enacting Section 209(b)’s language almost exactly to provide a waiver for California regulation of nonroad vehicles and engines in Section 209(e). 42 U.S.C. § 7543(e).

This Court has confirmed that Section 209(b) is deferential to California and generally requires EPA to grant a waiver. *MEMA I*, 627 F.2d at 1120-22. It does not provide for “probing substantive review,” *Ford Motor Co. v. EPA*, 606 F.2d

1293, 1301 (D.C. Cir. 1979), and “the burden of proof lies with the parties favoring denial of the waiver,” *MEMA I*, 627 F.2d at 1121. EPA is not required to affirmatively find that California passes the three waiver criteria – EPA need only examine waiver opponents’ evidence to determine if it overcomes the presumption of waiver. *Id.* at 1121-22. The Court has also clarified that EPA’s consideration is limited to evidence concerning the three waiver criteria. *Motor & Equip. Mfrs. Ass’n v. Nichols*, 142 F.3d 449, 462 (D.C. Cir. 1998) (“*MEMA II*”).

Given that deferential posture, EPA’s “traditional” interpretation of Section 209(b) has been to assess, under the three waiver criteria, whether California’s program of vehicle-emission standards *as a whole* is at least as protective as the federal program (209(b)(1)(A)), is needed to meet compelling and extraordinary conditions (209(b)(1)(B)), and provides for technologically feasible standards considering lead time and cost (209(b)(1)(C)). *See* 87 Fed. Reg. 14332, 14333 (Mar. 14, 2022).

## **2. Section 177.**

Congress’s 1977 amendments recognized that California’s vehicle-emission regulations might benefit other states struggling to meet national air quality standards. H.R. Conf. Rep. 95-564, at 1570 (1977). Clean Air Act Section 177 accordingly allows states with planning obligations under the National Ambient Air Quality Standards program to adopt California vehicle-emission standards in

place of federal standards. 42 U.S.C. § 7507. While EPA must approve the inclusion of those standards in state air quality plans under Title I of the Act, *see id.* § 7410(a)(1), (k), EPA has no role in a state’s choice to adopt those standards in the first place, *see id.* § 7507.

## **B. Energy Policy and Conservation Act of 1975.**

Under the Energy Policy and Conservation Act of 1975 (“EPCA”), the National Highway Traffic Safety Administration (“NHTSA”) establishes fleet-wide average fuel-economy standards, set at the “maximum feasible average fuel economy level that [NHTSA] decides the manufacturers can achieve in that model year,” considering various factors including “the effect of other motor vehicle standards of the Government on fuel economy.” 49 U.S.C. § 32902(a), (f). EPCA preempts state laws “adopt[ing] or enforc[ing] a law or regulation related to fuel economy standards or average fuel economy standards” where a relevant NHTSA fuel-economy standard is in place. *Id.* § 32919(a).

## **II. Factual and regulatory background.**

### **A. California’s vehicle program.**

#### **1. California’s pollution challenges.**

California historically suffered, and presently suffers, from some of the worst air quality in the country. When Section 209(b) was adopted in 1967, “California’s pollution problem was ... among the most pervasive and acute in the

Nation.” H.R. Rep. No. 95-294, at 301. Today, California contains the only regions in the United States whose ozone problems (*i.e.*, smog) are “extreme” under the Clean Air Act.<sup>1</sup> And it has more than half the nation’s ten worst areas for both ozone and particulate matter pollution. 87 Fed. Reg. at 14377 n.469.

These problems derive from several factors, including California’s unusual “geographical and climatic conditions (like thermal inversions)” and “large numbers and high concentrations of automobiles.” 78 Fed. Reg. 2112, 2126 (Jan. 9, 2013); *see* H.R. Rep. No. 90-728, at 22, 97 (attributing 90% of the smog in Los Angeles County to motor vehicles). Ozone is also exacerbated by higher temperatures, so climate change is expected to worsen California’s smog. *See* 87 Fed. Reg. at 14350 & n.165.

California faces other challenges from climate change, “including increasing risks from record-setting fires, heat waves, storm surges, sea-level rise, water supply shortages and extreme heat.” *Id.* at 14363; *see also id.* at 14338-39 & nn.37 & 43. These particularly affect California due to the State’s unique characteristics, including:

- The largest agriculture-based and ocean-based economies of any state
- The largest state coastal population, representing 25% of the nation’s total

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<sup>1</sup> *See* <https://www3.epa.gov/airquality/greenbook/jbtc.html>.



- The nation's greatest variety of ecosystems and the most threatened and endangered animal species
- Heavy dependence on irrigation and an over-stressed water supply
- Great susceptibility to wildfires

*See* 74 Fed. Reg. 32744, 32746 (July 8, 2009).

**2. Low-emission and zero-emission vehicle regulation under Section 209.**

California first regulated vehicle emissions in the 1950's, years before Congress inaugurated a federal vehicle-emission program in 1965. *See MEMA I*, 627 F.2d at 1108-09 & n.26. After the passage of Section 209(b) in 1967, California's program continued through regular waiver requests. California's "low-emission vehicle" standards were initially focused on ozone-generating pollutants, like nitrogen oxides. *See, e.g.*, 43 Fed. Reg. 25729, 25735 (June 14, 1978); H.R. Rep. No. 90-728, at 96. But over time, California added additional standards for pollutants like particulate matter. *See* 49 Fed. Reg. 18887, 18890 (May 3, 1984). Ozone and particulate matter were later included in the list of six pollutants the Clean Air Act refers to as "criteria" pollutants and regulates under the Act's National Ambient Air Quality Standards. 42 U.S.C. § 7408; 40 C.F.R. Part 50.

California adopted its first "zero-emission vehicle" standard in 1990, which EPA approved in 1993. 13 Cal. Code Regs. § 1960.1(g)(2) (1991); 58 Fed. Reg.

4166 (Jan. 13, 1993). That standard required an annually increasing percentage of vehicles sold in California to have no tailpipe emissions at all – for example, because they run on electric batteries rather than combustion engines. *See* 78 Fed. Reg. at 2118. Over the last 30 years, EPA has granted multiple California waiver requests that include zero-emission vehicle standards, recognizing that California now employs those standards to address both criteria and greenhouse-gas pollution. *See* 87 Fed. Reg. at 14363 n.295, 14351 n.168.

California adopted its first light-duty vehicle-emission standards for greenhouse gases in 2004 and included those standards in its 2005 waiver submission to EPA. *See* 74 Fed. Reg. at 32746-47. EPA initially denied that waiver request, concluding that Section 209(b)(1)(B), the second waiver criterion, allowed only standards addressing “compelling and extraordinary conditions” that are local or regional. 73 Fed. Reg. 12156, 12160 (Mar. 6, 2008). A year later, EPA concluded that the denial was based on an “inappropriate interpretation” of Section 209 at odds with the Act’s text and history, so EPA returned to its traditional interpretation and granted California’s request. 74 Fed. Reg. at 32745-46.

Over the decades, California has requested, and EPA has granted, more than 75 waivers or waiver amendments for standards governing criteria pollutant and

greenhouse-gas emissions from light-duty vehicles like passenger cars, heavy-duty vehicles like buses and trucks, and motorcycles. *See, e.g.*, 87 Fed. Reg. at 14338.<sup>2</sup>

### **3. The Advanced Clean Cars program.**

In 2012, California amended its vehicle-emission standards for light-duty vehicles in a comprehensive update it called the Advanced Clean Cars program. *See* 13 Cal. Code Regs. §§ 1961.3, 1962.2; 78 Fed. Reg. at 2114. Those standards included changes to criteria pollutant requirements covering model years 2015-2025, and updated and integrated California's greenhouse-gas emissions requirements for model years 2017-2025. 78 Fed. Reg. at 2114. The program also updated California's zero-emission vehicle standard, which requires automakers to generate or acquire credits for zero-emission vehicles sold in California; in the Advanced Clean Cars program, that credit obligation rose from about 10% of a manufacturer's new vehicle sales to about 15% by 2025. *Id.*

California's waiver request indicated that its standards would reduce emissions causing climate change and smog. *Id.* The Advanced Clean Cars program also included a provision specifying that manufacturers complying with contemporaneous federal vehicle-emission standards – which had been coordinated

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<sup>2</sup> *See* <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

with California’s own program and were also finalized in 2012, *see id.* at 2122 – would be “deemed to comply” with California’s standards as well. *Id.* at 2121.

**B. EPA’s Advanced Clean Cars program waiver.**

**1. The 2013 waiver.**

In 2013, EPA granted California’s 2012 waiver request for its Advanced Clean Cars program. 78 Fed. Reg. 2112. EPA determined that California had reasonably concluded that its standards were, in the aggregate, as protective as federal standards, *id.* at 2123-25; opponents had not demonstrated that California “no longer has a need for its motor vehicle emissions program” as a whole, and, in the alternative, no party had demonstrated that California did not need its greenhouse-gas or zero-emission vehicle standards, *id.* at 2125-31; and opponents had not shown California’s standards were inconsistent with applicable feasibility requirements, *id.* at 2131-45. EPA specified that its conclusions considered California’s own standards and were not predicated on the State’s “deemed-to-comply” provision. *Id.* at 2132, 2138-39. EPA also affirmed that its conclusions were final and not conditioned on future review of the standards’ feasibility. *Id.* at 2128, 2137.

That 2013 waiver was not challenged.

## 2. The 2019 Withdrawal Decision.

In 2018, EPA proposed to reopen its 2013 waiver to withdraw the portions covering California's greenhouse-gas and zero-emission vehicle standards. *See* 83 Fed. Reg. 42986 (Aug. 24, 2018). That action was finalized in the 2019 Withdrawal Decision, which EPA issued in tandem with new NHTSA regulations addressing EPCA's preemption provision. 84 Fed. Reg. at 51328.

EPA advanced two bases for withdrawal. The first was that the waiver for California's greenhouse-gas and zero-emission vehicle standards conflicted with NHTSA's new pronouncement that state vehicle greenhouse-gas regulations were preempted by EPCA. *Id.* at 51337-38. While EPA "d[id] not intend in future waiver proceedings ... to consider factors outside the statutory criteria" in Section 209(b)(1), like EPCA preemption, EPA felt compelled to consider NHTSA's conclusion where the two agencies were acting jointly and simultaneously. *Id.* at 51338.

The second basis was that EPA no longer supported its traditional whole-program interpretation of Section 209 and believed instead that ambiguity in the second waiver criterion – providing for denial of a waiver where California "does not need such State standards to meet compelling and extraordinary conditions," 42 U.S.C. § 7543(b)(1)(B) – should be read to require assessment of California's greenhouse-gas and zero-emission vehicle standards in isolation, separately from

California's other standards. 84 Fed. Reg. at 51340-41. The Withdrawal Decision concluded that California did not need its greenhouse-gas and zero-emission standards because greenhouse-gas pollution is well-mixed in the atmosphere and not unique to California, and so lacks a "particularized nexus" between pollutant emissions from sources, air pollution, and the resulting impacts. *Id.* at 51339, 51347.

EPA received three administrative petitions for reconsideration. 87 Fed. Reg. at 14340. The Withdrawal Decision was also challenged in *Union of Concerned Scientists v. NHTSA*, D.C. Cir. No. 19-1230 (and consolidated cases).

### **3. The 2022 Restoration Decision.**

In 2021, EPA expressed concern that the 2019 Withdrawal Decision had been improper and announced its intention to review it. 86 Fed. Reg. 22421 (Apr. 28, 2021). Meanwhile, NHTSA repealed its preemption regulations and renounced associated interpretive statements concerning EPCA's effect on California's greenhouse-gas standards. 86 Fed. Reg. 74236 (Dec. 29, 2021). In response, the Court placed the litigation over the Withdrawal Decision in abeyance, where it remains, pending the outcome of this matter. *See* D.C. Cir. No. 19-1230, ECF Nos. 1884115, 1952869.

On March 14, 2022, EPA finalized the Restoration Decision, which found the Withdrawal Decision deficient in several respects: first, it was an improper

exercise of EPA’s reconsideration authority; second, it was based on a “flawed” interpretation of Section 209(b); third, “even under that flawed interpretation, EPA misapplied the facts and inappropriately withdrew the waiver”; and fourth, EPA erred in looking beyond the Section 209(b) criteria to consider NHTSA’s view of EPCA, which was, in any case, now withdrawn. 87 Fed. Reg. at 14333. The Restoration Decision thus rescinded the Withdrawal Decision and restored the 2013 waiver for California’s Advanced Clean Cars program. *Id.* at 14378-79.

### **SUMMARY OF ARGUMENT**

1. The Court should dismiss these petitions as a threshold matter.

a. State Petitioners lack standing. Their assertions of economic injury-in-fact from California’s zero-emission vehicle standards are unsupported and conclusory, depending on an extended chain of third-party actions without any evidence of harm. At the same time, State Petitioners have benefitted substantially from the increasing electrification of the vehicle industry. And State Petitioners do not allege any economic injury from California’s greenhouse-gas standards, precluding their challenges to that aspect of EPA’s waiver. Nor have they alleged a concrete constitutional sovereignty injury: they do not claim to have been deprived of any authority that they wish to exercise, and the relief sought would not provide them with any additional authority.

b. None of the Petitioners can bring their statutory claims. They are not regulated by the challenged standards and do not seek to promote Congress's objective of ameliorating air quality. So they fall outside Section 209's zone of interests.

2. Clean Air Act Section 209(b) is constitutional. Congress holds plenary power under the Commerce Clause to decide how to regulate motor-vehicle air pollution, and it appropriately exercised such power in authorizing California to continue its landmark vehicle program. Congress reasonably determined both that California's severe air pollution challenges warranted separate standards, and that preserving the State's pre-existing program would benefit the nation.

State Petitioners' theory that equal-sovereignty principles limit plenary Commerce Clause power by imposing a *per se* bar on differentiation between states is entirely unsupported by constitutional text, history, and precedent. Even in the separate Fifteenth Amendment context where equal-sovereignty principles have some application, they do not apply in the manner proposed by Petitioners, as Petitioners' own primary authority – *Shelby County, Ala. v. Holder* – underscores. *See* 570 U.S. 529, 544 (2013) (principles of equal sovereignty do not operate as a bar on differential treatment). In any event, any heightened review standard applied in *Shelby County* does not apply to regulation of motor-vehicle emissions



under the Commerce Clause, which does not involve any extraordinary displacement of core state sovereign functions. And Petitioners have not advanced, and have now forfeited, any argument that Section 209 is not suitably designed to meet either the applicable rational-basis standard or any heightened standard applied in *Shelby County*.

Petitioners' proposed new constitutional limitation is not only invented, it is impractical and unadministrable. Among other problems, it would void numerous longstanding federal laws, lack clear boundaries, and serve to actually increase federal power in areas where Congress has reasonably elected to leave it closer to the people affected.

3. EPA appropriately concluded that the Withdrawal Decision was not a proper exercise of its inherent reconsideration authority, as it sought to rewrite the outcome of a settled adjudication after six years and the accrual of substantial reliance interests. The Withdrawal Decision was therefore inappropriate as a threshold matter – whether or not the interpretations advanced therein were invalid.

4. Alternatively, the Restoration Decision's substantive grounds for rescinding the Withdrawal Decision were sound.

a. EPA appropriately determined that the Withdrawal Decision was legally and factually deficient. For more than 50 years, EPA has reviewed California's need for its separate motor vehicle program, not for individual

standards. The new statutory interpretation deployed in the Withdrawal Decision to partially revoke California's waiver is inconsistent with the statutory text, which directs EPA to consider California's standards "in the aggregate" and invokes that same scope of review in each of Section 209(b)(1)'s subsections. It is also inconsistent with congressional intent, longstanding practice, and this Court's precedent, which uniformly reflect that Congress intended to give California broad discretion to innovate in the field of vehicle-emission controls. Neither the fact that the pollutants regulated are greenhouse gases, nor Petitioners' invocation of inapplicable clear-statement rules, changes these facts.

b. Even assuming the Withdrawal Decision's narrow statutory interpretation was reasonable, waiver opponents failed to prove that California does not need its greenhouse-gas and zero-emission vehicle standards to meet compelling and extraordinary conditions – related to both greenhouse-gas and criteria pollution – so restoration of the waiver was appropriate.

c. EPA appropriately declined to consider the status of California's vehicle standards under a separate statute, EPCA, which falls outside the limited criteria Congress specified for denial of a waiver and is not administered by EPA. Even the Withdrawal Decision, by its own terms, considered EPCA only in the context of a simultaneous NHTSA action that has been withdrawn. EPA explained why such issues were not appropriate for this

proceeding and, in any case, such preemption arguments may be raised in more appropriate fora.

### STANDARD OF REVIEW

The Administrative Procedure Act provides the standard of review for EPA's action. 5 U.S.C. § 706. The Court “must uphold the [EPA] Administrator’s action” unless it is “arbitrary, capricious, [an abuse of discretion], or otherwise not in accordance with law,” or if it fails to meet statutory, procedural, or constitutional requirements. *MEMA I*, 627 F.2d at 1105. The Court may not “substitute [its] judgment for that of the Administrator,” *id.*; where EPA has considered the relevant factors and articulated a rational connection between facts found and choices made, its regulatory choices must be upheld. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). This standard applies equally to agency revisions of previous decisions. *FCC v. Fox Television Stations*, 556 U.S. 502, 513-16 (2009).

Where “traditional tools of statutory interpretation” demonstrate that the agency’s interpretation of the statute is “the best one,” the court need not rely on deference to the agency. *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 45 F.4th 306, 313 (D.C. Cir. 2022). But agency interpretations that are “reasonable” should also be upheld. *Washington All. of Tech. Workers v. U.S. Dep’t of Homeland Sec.*, 50 F.4th 164, 192 (D.C. Cir. 2022).

## ARGUMENT

### **I. The petitions should be dismissed as a threshold matter.**

#### **A. State Petitioners lack Article III standing.**

To have Article III standing, State Petitioners must demonstrate an injury-in-fact that is “concrete and particularized,” “fairly traceable to the challenged action,” and redressable by the Court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

Petitioners bear the burden of establishing standing. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207-08 (2021). “[C]onclusory allegations” are insufficient, *Finnbin, LLC v. Consumer Prod. Safety Comm’n*, 45 F.4th 127, 137 (D.C. Cir. 2022); Petitioners must support each element of their standing claim by affidavit or other evidence, *Carbon Sequestration Council v. EPA*, 787 F.3d 1129, 1133 (D.C. Cir. 2015). Where the alleged injury depends upon third-party decisions, standing “is ordinarily substantially more difficult to establish.” *California v. Texas*, 141 S. Ct. 2104, 2117 (2021). The standing inquiry is also “especially rigorous” when petitioners present constitutional questions. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013).

#### **1. State Petitioners have not substantiated economic injury.**

State Petitioners’ purported economic harms do not support standing. While they purport to challenge EPA’s grant of a waiver for two separate sets of

California standards – greenhouse-gas standards for conventional vehicles and zero-emission vehicle standards – State Petitioners provide no evidence that they are injured by the former. *See* State Br. 14-15; State Add.38-54. Petitioners’ purported harms stem only from California’s zero-emission vehicle standard. *Id.*; State Add.54. “[A] plaintiff must demonstrate standing for each claim he seeks to press,” *Davis v. FEC*, 554 U.S. 724, 734 (2008), so State Petitioners lack standing to assert that EPA’s waiver must be set aside because California’s greenhouse-gas standard is unlawful. *See* State Br. 33-41.

State Petitioners’ purported injuries from California’s zero-emission vehicle standard, meanwhile, are nonspecific, conclusory, and conjectural. State Petitioners premise standing on alleged increases in state vehicle costs or grid investments, or decreases in state fuel tax revenue. *See* State Add.6-54. But despite the fact that this California zero-emission vehicle standard has been operational since 2013, 78 Fed. Reg. at 2119, not one State Petitioner, or Petitioners’ expert declaration, asserts – let alone substantiates – that state costs have actually increased or state revenue has actually decreased. State Petitioners’ declarations aver only that they have purchased vehicles, not that purchase costs have actually risen. *See* State Add.6-36 (attesting to, *e.g.*, purchases of “two gas-powered vehicles” since December 2019).

Instead, Petitioners' expert declaration attempts to construct a theory of how California's waiver might lead to the alleged harms. *See* State Add.38-54. But Petitioners' "evidentiary submissions must be more than an ingenious academic exercise in the conceivable," *Carbon Sequestration Council*, 787 F.3d at 1140; they must provide "substantial evidence" "leaving little doubt" as to the chain of causation, *Arpaio v. Obama*, 797 F.3d 11, 20 (D.C. Cir. 2015).

Petitioners' declaration falls far short. It claims that State Petitioners will pay more for fleet vehicles because automakers will raise prices uniformly on all conventional vehicles nationwide to allow lower prices on zero-emission vehicles in California and Section 177 states. EPA has acknowledged that automakers may choose to cross-subsidize between vehicle models, including to support adoption of zero-emission vehicles. *See, e.g.*, 78 Fed. Reg. at 2141-42. But the declaration converts this description of industry flexibility into rampant speculation as to how independent third parties will behave, including that consumers in those select states will not buy sufficient zero-emission vehicles absent discounts; that auto manufacturers will "inexorabl[y]" and unilaterally institute price increases – regardless of market conditions – on every conventional vehicle model, including the precise models that State Petitioners would purchase; and that consumers would, and could, ship vehicles cross-country if vehicle pricing differed between states with and without zero-emission vehicle standards. *See* State Add.38-54.

And notably, the declaration does so entirely in the future tense – predicting that these changes “will” occur, with no evidence that they have, despite the near-decade since this zero-emission vehicle standard went into effect. *Id.* Such an “extended chain of contingencies” is not sufficient to establish standing. *Williams v. Lew*, 819 F.3d 466, 473 (D.C. Cir. 2016); *see Arpaio*, 797 F.3d at 21.

Even assuming the declaration’s many unsupported presumptions, the declaration fails to account for the myriad *other* significant influences on vehicle prices and consumer behavior, like tight vehicle supply chains and rising gasoline costs. Conspicuously, the declaration does not acknowledge that automakers – who notably have not challenged the waiver – have continued to produce electric vehicles with or without the current waiver. *See* 86 Fed. Reg. at 74438 (noting “accelerating transition to electrified vehicles” even with the Withdrawal Decision in place), 74486 (similar). State Petitioners thus do not substantiate redressability. *See Nat’l Wrestling Coaches Ass’n v. Dep’t of Educ.*, 366 F.3d 930, 938 (D.C. Cir. 2004) (rejecting standing based on “speculati[on]” that policy changes “will alter the behavior of regulated third parties that are the direct cause” of the injury); *Swanson Grp. Mfg. LLC v. Jewell*, 790 F.3d 235, 243-44 (D.C. Cir. 2015) (harm reflecting other economic trends was not redressable).

The declaration’s assertions as to fuel-tax- and electric-grid-related harms require even more speculative additions to this chain of causation. State

Petitioners assert that by affecting conventional vehicle prices, California’s standard will reduce the number of conventional vehicles and induce zero-emission vehicle sales in states where that standard does not apply, leading to reductions in fuel-consumption-based tax revenue, and increases in electricity consumption in Petitioner states. *See* State Add.51-54. State Petitioners do not “set forth specific facts” demonstrating that these are “predictable” and “fairly traceable” effects of California’s standards – especially where they assert only that California’s standard “*might* create some substitution” of zero-emission vehicles for conventional vehicles in Ohio, State Add.51-52 (emphasis added), and where Ohio and 13 other State Petitioners *already* have laws that charge annual zero-emission vehicle fees to replace lost fuel-tax revenues.<sup>3</sup>

Moreover, electric vehicle, battery, and charger manufacturers have announced more than \$25 billion in new investments in 15 Petitioner states in the last 18 months alone.<sup>4</sup> Indeed, Ohio has claimed in documents seeking federal

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<sup>3</sup> <https://www.ncsl.org/research/energy/new-fees-on-hybrid-and-electric-vehicles.aspx#map>.

<sup>4</sup> *See, e.g.*, <https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-honda-to-invest-in-ohio-for-electric-vehicle-production-including-new-battery-plant-with-lg-energy-solution-10112022> (\$4.2+ billion investment in Ohio); <https://www.cnbc.com/2022/05/20/hyundai-to-invest-5point5-billion-to-build-evs-and-batteries-in-georgia.html> (\$5.5 billion Georgia); <https://www.cnbc.com/2021/09/27/ford-battery-supplier-to-spend-11point4-billion-to-build-new-us-plants.html> (\$5.8 billion Kentucky); <https://fortune.com/2022/10/19/bmw-1-billion-electric-vehicle-plant-investment-spartanburg-south-carolina-batteries/> (\$1.7 billion South Carolina);



funding for electric-vehicle infrastructure that it “has supported the [electric-vehicle] transition” and “seeks to ensure Ohio’s full participation in building a national [electric-vehicle] charging network.”<sup>5</sup> These benefits and statements undermine State Petitioners’ claims of harm. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (rejecting standing based in part on evidence of economic benefit).

State Petitioners’ standing deficiencies cannot be ameliorated by their assertion of “special solicitude” for state parties because Petitioners do not claim a quasi-sovereign interest in their economic harms, as Petitioners acknowledge they must. *See* State Br. 16 (citing *Gov’t of Manitoba v. Bernhardt*, 923 F.3d 173 (D.C. Cir. 2019)). In any case, there is no special solicitude for states’ economic injuries. *See Arizona v. Biden*, 40 F.4th 375, 386 (6th Cir. 2022).

## **2. State Petitioners lack standing premised on a constitutional injury.**

State Petitioners also lack standing premised on a purported constitutional right to equal sovereignty because they identify no particularized, concrete, and

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<https://www.southbendtribune.com/story/opinion/columns/2022/10/06/indiana-poised-to-be-a-manufacturing-hub-for-electric-vehicles-parts/69541780007/> (\$2.5+ billion Indiana); <https://www.kansascommerce.gov/2022/07/kansas-lands-4b-4000-job-panasonic-energy-electric-vehicle-battery-plant/> (\$4 billion Kansas).

<sup>5</sup> [https://www.fhwa.dot.gov/environment/nevi/ev\\_deployment\\_plans/oh\\_nevi\\_plan.pdf](https://www.fhwa.dot.gov/environment/nevi/ev_deployment_plans/oh_nevi_plan.pdf); *see also* <https://driveelectric.gov/state-plans/> (all 50 state plans).

redressable sovereignty injury. California’s preemption waiver does not “impose obligations on the States.” *Missouri v. Biden*, 52 F.4th 362, 369 (8th Cir. 2022). Nor does the waiver “displace[] the States’ exercise of their police powers.” *Hodel v. Va. Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 291 (1981). And Petitioners profess no interest in lifting preemption and exercising police power to regulate vehicle emissions. Instead, the relief they seek – lifting the waiver of preemption for California – would only deprive them of the power they presently have to adopt California’s standards into their own laws. As a result, they would have less sovereign power than they have presently. Thus, no sovereignty injury has been identified or is redressable.

**B. Petitioners do not fall within Section 209’s zone of interests.**

All Petitioners’ statutory claims also should be dismissed because precedent indicates that Petitioners do not fall within the zone of interests protected by Section 209.

Petitioners lack a cause of action if their “interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress” intended to permit them to bring suit. *CSL Plasma Inc. v. U.S. Customs & Border Prot.*, 33 F.4th 584, 589 (D.C. Cir. 2022). Petitioners cannot meet this test because their interests in propping up demand for certain fuel

products, or otherwise furthering their pecuniary interests, are unrelated to, or even inconsistent with, the purposes of Section 209.

The assertion that the Restoration Decision will cause economic injury to Petitioners is insufficient to bring them within the zone of interests. They “make no attempt to show,” and cannot show, that Congress intended for the Act to protect Petitioners’ economic interests, “either directly or as a proxy for the environmental interests of the public for whose protection the Act was presumably passed.” *Sierra Club v. EPA*, 292 F.3d 895, 903 (D.C. Cir. 2002).

In *Delta Construction Co. v. EPA*, this Court held – in the context of the very same kind of greenhouse-gas emission standards at issue here – that a petitioner’s interest in incentivizing regulated parties to build vehicles that would accommodate its clean fuel product fell outside the Act’s zone of interests. 783 F.3d 1291, 1300 (D.C. Cir. 2015).<sup>6</sup> The Court explained it is not sufficient that “corporations’ pecuniary interests in increasing demand for their products are aligned with the goals of the [Act].” *Id.* (internal quotation omitted).

This reasoning dictates that Petitioners’ interests are likewise insufficient. Fuel Petitioners similarly seek to incentivize regulated manufacturers to build

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<sup>6</sup> See also, e.g., *Twin Rivers Paper Co. LLC v. SEC*, 934 F.3d 607 (D.C. Cir. 2019) (paper manufacturers not within zone of interests protected by securities laws); *Grocery Mfrs. Ass’n v. EPA*, 693 F.3d 169, 179 (D.C. Cir. 2012) (food groups not within zone of interests of renewable fuel volume program).

vehicles that will support Petitioners' preferred fuel products. Fuel Br. 20. But these interests are even more marginal than the *Delta* petitioner's interest, as they are in tension with the Act's goals. Less stringent emission regulation as preferred by Petitioners correlates with increased emissions endangering public health and welfare. *See* 42 U.S.C. §§ 7521(a)(1), 7543(b)(1) (providing EPA authority to set emission standards for air pollutants and requiring waived state standards to be as protective). Likewise, State Petitioners' pecuniary interests related to vehicle costs and tax revenue fall outside of Section 209's zone of interests.

## **II. Section 209's preemption structure is constitutional.**

The preemption framework in Section 209(b) falls within Congress's plenary Commerce Clause power. In employing this power to regulate air pollution, Congress may preserve pre-existing State programs; it is not obliged to preempt them indiscriminately. Moreover, Congress appropriately recognized the benefits for the nation to be derived from permitting California to improve upon "its already excellent program of emissions control" and continuing to serve as a forum for innovation. *MEMA I*, 627 F.2d at 1109-10. It also appropriately recognized the benefits to be derived from allowing California to address the State's particularly severe air quality problems. Petitioners' proposal to impose a new constitutional limit on Congress's Commerce Clause power – premised on

novel ideas as to how equal-sovereignty principles should operate – finds no support in constitutional text or precedent, and merits rejection.

**A. Congress’s authority to regulate vehicle emissions under the Commerce Clause is plenary and subject only to rational-basis review.**

Congress holds plenary power to regulate interstate commerce. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937). This Commerce Clause power “is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution” and are “expressed in plain terms.” *Gibbons v. Ogden*, 22 U.S. 1, 196 (1824).

The regulation of motor-vehicle emissions in Clean Air Act Title II, including the preemption framework in Section 209, is an appropriate exercise of Commerce Clause power. The Commerce Clause power plainly encompasses federal regulation of air pollution. *Miss. Comm’n on Env’t Quality v. EPA*, 790 F.3d 138, 180-83 (D.C. Cir. 2015). Consequently, the only constitutional question presented here is whether “Congress acted rationally in adopting” this specific preemption framework. *Hodel*, 452 U.S. at 276.

**1. Congress may differentiate between states in exercising plenary Commerce Clause authority.**

Petitioners object to Congress’s decision to extend to California alone the ability to request a preemption waiver. But there is no bar “expressed in plain

terms” precluding Congress from making reasonable preemption distinctions between states or the regions they represent. *Gibbons*, 22 U.S. at 196.

The Constitution provides very few promises of equality among the states, and it articulates those with particularity. For example, it provides for uniform duties, imposts, and excises throughout the United States. U.S. Const. art. I, § 8, cl. 1. It provides for uniform naturalization and bankruptcy regulation, and that no preferences shall be given to the ports of one state over those of another. *Id.* art. I, § 8, cl. 4; § 9, cl. 6. These specific guarantees of equal treatment reflect the *absence* of any more general principle that Congress’s enactments must broadly provide for identical standards across different states.

The Commerce Clause is not among the provisions for which the Constitution prescribes a need for geographic uniformity. Its text makes as much clear, allowing Congress “[t]o regulate commerce ... among the several States.” U.S. Const. art. I, § 8, cl. 3. The Supreme Court has thus pronounced: “There is no requirement of uniformity in connection with the commerce power ... such as there is with respect to the power to lay duties, imposts and excises.” *Currin v. Wallace*, 306 U.S. 1, 14 (1939); *see also Hodel*, 452 U.S. at 332 (a claim of arbitrariness in evaluating exercise of Commerce Clause authority “cannot rest solely on a statute’s lack of uniform geographic impact”).

Thus, while a “guarantee of uniformity in treatment amongst the states cabins some of Congress’ powers,” “no such guarantee limits the exercise of Commerce Clause Power.” *NCAA v. Governor of N.J.*, 730 F.3d 208, 238 (3d Cir. 2013), *abrogated on other grounds by Murphy v. NCAA*, 138 S. Ct. 1461 (2018). “This only makes sense: Congress’ exercises of Commerce Clause authority are aimed at matters of national concern and finding national solutions will necessarily affect states differently.” *Id.* at 238.

Consistent with these principles, Congress may rationally elect to grandfather a state’s authority to run its own regulatory program, or otherwise create principled preemption distinctions when creating new federal programs. Indeed, “[g]randfather clauses are a long-accepted legislative tool.” *Kampfer v. Cuomo*, 643 F. App’x 43, 44 (2d Cir. 2016).

The United States Code is replete with examples where Congress elected to treat states disparately with respect to preemption, either by including grandfather provisions or otherwise. For example, Congress exempted Texas’ intrastate electric grid from the full panoply of federal public utility regulation, thereby allowing Texas alone to retain certain sovereign authority over power transmission not enjoyed by any other state. 16 U.S.C. §§ 824k(k), 824p(k), 824q(h), 824t(f).

Among other examples:

- Federal law preempts state regulation of most aspects of hydroelectric projects but allows Alaska to assume jurisdiction over small hydroelectric projects. 16 U.S.C. § 823c.
- Congress exempted Hawaii from preemption under the Employee Retirement Income Security Act. 20 U.S.C. § 1144(b)(5).
- Congress exempted various state laws related to energy conservation from preemption under EPCA. 42 U.S.C. § 6297(c)(4)-(5), (8)-(9).
- Congress authorized certain states to retain or enact special rules concerning vehicle use on interstate highways. 49 U.S.C. § 31112(c).

And beyond differentiating with respect to preemption, Congress routinely legislates in other ways intended to benefit and empower only certain states. For example, Congress has created numerous regional commissions, such as the Appalachian Regional Commission, that are partnerships between the federal government and selected states to foster regional development. *See* 40 U.S.C. Chapters 143, 153.

Differential treatment of states is thus both accepted and commonplace.

**2. Congress’s authority to regulate motor-vehicle emissions under its Commerce Clause power is not limited by equal-sovereignty principles.**

In one distinct area of federal power outside of the Commerce Clause context, the Supreme Court recognized that principles of equal sovereignty may operate to limit certain exercises of Congress’s power. Specifically, in *Shelby County v. Holder*, the Court held that equal-sovereignty principles applied to limit Congress’s Fifteenth-Amendment authority to impose disparate restrictions on



state election procedures. The circumstances in *Shelby County* are not comparable to those here. Indeed, that case, and those construing it, make clear that equal-sovereignty principles do not constrain ordinary Commerce Clause legislation.

In *Shelby County*, the Supreme Court took pains to emphasize the “extraordinary” nature of the Voting Rights Act’s preclearance provisions. 570 U.S. at 545. Those provisions required a disfavored small subset of states to obtain federal permission before any of their laws related to voting could take effect; indeed, the Court understood the provisions to constrain those states from even “enacting” such laws. *Id.* at 534-35. Such requirements intruded into a sensitive area of state policymaking – local election regulation – that had traditionally been the exclusive province of the states. In that sensitive and specific context, the Supreme Court found a “principle of equal sovereignty” to be “highly pertinent.” *Id.* at 530.

The principles of federalism that animated the heightened standard applied in the voting procedure context do not apply to the regulation of privately manufactured motor vehicles. Unlike Congress’s Article I powers, the Fifteenth Amendment operates directly on states and displaces state powers historically recognized as core sovereign ones. Concerns about “federal intrusion into sensitive areas of state and local policymaking,” *id.* at 545, have considerably less salience where, as here, Congress is exercising the quintessentially federal power

of regulating interstate commerce. This principle has special force in the present context, as air pollution – by its nature – crosses state borders. *See EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 496 (2014).

Indeed, State Petitioners express no interest in pursuing their own regulation of vehicle emissions. If they had, they would be requesting a remedy that would enable them to apply for a preemption waiver. They instead request relief intended to further expand federal power at the expense of all states. State Br. 1. Nothing in *Shelby County* suggests that any equal-sovereignty principle can be so utilized.

And unlike the situation present in *Shelby County*, neither Section 209(b) nor California’s regulatory efforts have imposed any sovereignty burden. In *Shelby County*, Congress had singled out a handful of states for *disfavored* treatment, obligating them to take additional steps not required of other states. In contrast, Section 209(b) *enhances* state sovereignty in a regulatory area where states otherwise would have retained no power.

Indeed, by later adding Section 177, which allows other states to opt-in to California standards, Congress increased the regulatory options available to *all* states – while requiring nothing of states that prefer the federal standards. The preemption exception for California is thus nothing like the “extraordinary departure from the traditional course of relations between the States and the Federal Government” described in *Shelby County*. 570 U.S. at 545.

Considering these distinctions, the two circuit courts that have considered the question subsequent to *Shelby County* have declined to extend equal-sovereignty principles to Article I legislation. *Mayhew v. Burwell*, 772 F.3d 80, 93-96 (1st Cir. 2014); *NCAA*, 730 F.3d at 237-39. Their reasoning for doing so applies fully here.

In *Mayhew*, the First Circuit held that equal sovereignty principles were not applicable to an Affordable Care Act provision enacted under Congress's Spending Clause authority. The court noted that "[f]ederal laws that have differing impacts on different states are an unremarkable feature of, rather than an affront to, our federal system." 772 F.3d at 95. It then concluded that equal-sovereignty principles apply only in "extraordinary situations" where the federal government intrudes into sensitive areas of state policymaking. *Id.* The case presented no such situation.

The Third Circuit in *NCAA* similarly held that equal sovereignty principles did not apply to a statute enacted pursuant to Congress's Commerce Clause power giving preferential treatment to Nevada alone to authorize sports gambling. The court reasoned that any regulation of interstate commerce necessarily affects states differently and that the regulation of gambling via the Commerce Clause is "not of the same nature as the regulation of elections" under the Fifteenth Amendment. 730 F.3d at 238. So too here with respect to regulation of interstate air pollution.

This Court's precedent in other constitutional areas also supports this conclusion. In *Nuclear Energy Institute v. EPA*, 373 F.3d 1251 (D.C. Cir. 2004), this Court held that the Constitution does not contain any implied requirement for "equal treatment" of states when Congress is exercising authority under Article IV's Property Clause. *Id.* at 1305-09. Like the Commerce Clause, the Property Clause provides the United States with plenary power, albeit with respect to federal lands. *Id.* at 1308.

**B. Even if equal-sovereignty principles apply, Section 209(b) meets any applicable heightened review standard, and Petitioners have forfeited any contrary argument.**

Even in the far more sensitive context of state voting procedures, the Supreme Court has affirmed that principles of equal sovereignty do not operate "as a bar on differential treatment." *Shelby Cnty.*, 570 U.S. at 544 (citation omitted) (emphasis in original). Congress's choices may still be upheld if the legislation addresses exceptional conditions and there is "a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." *Id.* at 542 (quoting *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)).

Even if the Court were to apply equal-sovereignty principles in the same manner as in *Shelby County*, Section 209(b) would easily clear this bar. Here, the differentiated geographic preemption coverage within Section 209 is "sufficiently

related to the problem that it targets” – *i.e.*, ameliorating threats to public health and welfare caused by motor vehicle pollution. *Id.*

Indeed, State Petitioners fail even to try to demonstrate otherwise. In challenging Section 209(b), despite *Shelby County*, they rely exclusively upon their theory that equal-sovereignty principles categorically bar differentiated treatment of states. Thus, if the Court were to reject Petitioners’ *per se* unconstitutional argument, as it should under *Shelby County* itself, that should end the inquiry. Petitioners advance no alternative fact-based argument that Section 209 fails a “sufficiently-related” standard, much less the applicable rational-basis standard (*see supra* Argument II.A), so they have forfeited any such argument. *See Lake Carriers Ass’n v. EPA*, 652 F.3d 1, 9 n.9 (D.C. Cir. 2011).

In any event, the balance that Congress struck in Section 209 would meet any heightened standard articulated in *Shelby County*. As an initial matter, no one contests that Congress reasonably and permissibly elected to generally preempt state vehicle regulation. And here, Congress identified cogent reasons for creating a preemption exception specifically for California. Congress recognized that California’s air-quality problems were particularly severe. S. Rep. No. 90-403, at 33. It further recognized that California had already established a successful vehicle-emission control program. *Id.* Therefore, Congress reasonably determined that California should “be able to continue its already excellent program to the

benefit of the people of that State.” *Id.* Such grandfathering is a plainly legitimate legislative purpose, and one reflected in the statutory text itself: Section 209(b) applies to “any State which ha[d] adopted standards ... prior to March 30, 1966.” 42 U.S.C. § 7543(b)(1).

Congress also reasonably determined that authorizing the continuation and expansion of California’s “pioneering” regulatory efforts would create a state-level laboratory for innovation, driving experimentation in “new control systems and designs” that would benefit the nation as a whole. S. Rep. No. 90-403, at 33. Congress further reasonably concluded that industry, confronted with only one potential variation to federal standards, would “be able to minimize economic disruption.” *Id.* In this fashion, Congress struck a reasonable balance between regulatory experimentation and the needs of the regulated industry.

The decades following Congress’s enactment of Section 209(b) have served to confirm Congress’s prescience in concluding that preserving California’s regulatory program would further innovation. In implementing federal standards, the United States has, in fact, been able to draw “heavily” upon “the California experience to fashion and to improve the national efforts at emission control.” *MEMA I*, 627 F.2d at 1110. And following the 1977 amendments, numerous states have elected to adopt California’s standards, reflecting that California’s

experimentation has provided concrete benefits to other states pursuing their own air quality objectives. *See* 87 Fed. Reg. at 14379.

Section 209(b) also ensures that its “current burdens” are justified by “current needs.” *Shelby County*, 570 U.S. at 536. The statute incorporates a built-in mechanism for continual reevaluation of whether California continues to “need” its separate status. While the conditions in California that led Congress to create a preemption exception remain in place today (*see infra* Argument IV.B), the State will become ineligible for a waiver whenever it no longer has any “compelling and extraordinary” need for its own program. 42 U.S.C. § 7543(b)(1)(B). Thus, there is no danger of the California’s preemption exception outliving its utility.<sup>7</sup>

For all of these reasons, Section 209’s differentiated geographic preemption coverage satisfies even a heightened standard of judicial review. The differentiated coverage advances government interests in a sensible manner and “sufficiently relate[s] to the problem that it targets.” *Shelby County*, 570 U.S. at 242 (quotation omitted).

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<sup>7</sup> The fact that substantial reliance interests have developed in the 55 years since Section 209(b)’s promulgation further counsels for judicial restraint. *See* 87 Fed. Reg. at 14352 (noting reliance interests of Section 177 states who have adopted California standards to meet their own air quality objectives).

**C. Petitioners’ new, categorical constitutional rule is entirely unsupported by text, history, or precedent, and is impractical and unadministrable.**

As noted, State Petitioners do not contend that Section 209 is not suitably tailored. Nor are they even proposing the application of equal-sovereignty principles in any previously recognized form. They instead propose what amounts to an entirely new constitutional doctrine, premised on idiosyncratic notions as to how equal-sovereignty principles should operate. The Court should decline Petitioners’ invitation to invent and apply a new, atextual, constitutional rule.

Petitioners suggest that the Constitution implicitly prohibits, on a categorical basis, the differential treatment of states under any enumerated federal power whenever, in Petitioners’ words, such differential treatment concerns “political standing and sovereignty.” State Br. 26. Petitioners then say, at most, there is an exception when Congress regulates a matter of “unique concern” to a state. *Id.*

Petitioners invent this theory from whole cloth, pulling various strands of constitutional law from different contexts and twisting them into an unrecognizable new creation. Their theory is unsupported by text, history, or precedent. It is also impractical and unadministrable.

**1. Petitioners’ *per se* theory lacks support in text, history, or precedent.**

As Petitioners concede, State Br. 17, there is no limitation “expressed in plain terms” limiting the differential treatment of states under the Commerce



Clause. *Gibbons*, 22 U.S. at 196. Nor is there any implicit limitation on Commerce Clause authority “embedded in the text and structure of the Constitution” that is “historically rooted” and supported by judicial precedent. *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1499 (2019).

Far from it. Petitioners cannot identify a single precedent reflecting their proposed equal-sovereignty limitation on Commerce Clause power. Not only that, but Petitioners’ take on equal-sovereignty principles is irreconcilable with the principal decision they rely upon, *Shelby County*. As explained above, the Supreme Court made clear there that equal-sovereignty principles, where they apply, do not operate “as a *bar* on differential treatment”; they require at most only a heightened standard of review. 570 U.S. at 544 (emphasis in original). Yet, a *per se* bar on differential treatment is exactly what Petitioners are proposing.

Petitioners try a work-around. They claim that the states for the very first time “compromised” a pre-existing absolute right to equal sovereignty with the Reconstruction Amendments. State Br. 19. That assertion is baseless. The text of the Fifteenth Amendment – granting authority to enact “appropriate legislation” to protect voting rights – does not prohibit differentiation among states. But neither does the text of the Commerce Clause that existed prior to that Amendment. The Commerce Clause creates “Power ... To regulate Commerce ... among the States” and also enables Congress to draw distinctions.

Petitioners further fail to point to any evidence from contemporaneous sources, such as the Federalist Papers, that indicates that the Constitution effectuated, *sub silentio*, an implicit expansive equal-sovereignty guarantee that would significantly cabin the powers the Constitution otherwise very explicitly then granted to the federal government. Petitioners likewise fail to identify evidence during debate on the Reconstruction Amendments suggesting that anyone actually thought that the Constitution had embedded such a guarantee until then.

In fact, Petitioners have things quite backwards with respect to the original Constitution. Deeply woven into the original constitutional fabric is the understanding that the states will *not* wield equivalent sovereign power. At the Constitutional Convention, the structure and powers of the national government were the subject of contentious deliberations. Through the Great Compromise, the smaller states compromised their relative sovereign authority. They agreed to proportional representation in the House, granting larger states more representation and resulting power. U.S. Const. art. I, § 2, cl. 3. The smaller states further agreed to grant larger states more votes in nominating a President. *Id.* art. II, § 1, cl. 2. In these respects, the Constitution sharply departed from the earlier Articles of Confederation, which gave each state delegation one vote within the Confederation Congress. Articles of Confederation, art. V, cl. 4. The debates leading up to the Great Compromise confirm that delegates were well aware that proportional

representation meant that “some of the States of the Union will possess a greater Share of Sovereignty.” Notes of William Patterson in the Federal Convention of 1787 (available at [https://avalon.law.yale.edu/18th\\_century/patterson.asp](https://avalon.law.yale.edu/18th_century/patterson.asp)).

With respect to exercises of congressional power, the Constitution then specifically lists those limited circumstances where states must be treated equally, with those specific guarantees reflecting the absence of any more general guarantee of equal treatment. *See supra* Argument II.A.1. Other provisions then confirm the Framers’ expectation that differential political treatment of states could appropriately ensue from Congress’s general exercise of enumerated powers. Under the Tonnage Clause (Art. I, § 10, cl. 3), for example, Congress may consent, or not, to a particular state laying duties of tonnage – so the Founders clearly contemplated that some states may be granted such power, and others not.

Likewise, the Compact Clause (Art. I, § 10, cl. 3) reflects the Founders’ expectation that federal law could create distinctions between states related to sovereign authority. Under that Clause, states may agree to transfer sovereign rights to other states, or to exercise power that other states may not, if their agreement is approved by Congress into federal law. *See Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994); *Cuyler v. Adams*, 449 U.S. 433, 440 (1981) (consent of Congress required where interstate compact will increase “political power” of compact states and consent transforms compact into federal law).

Lacking textual, historical, or precedential support, Petitioners largely rely on a single law review commentary, citing repeatedly to Anthony Bellia, Jr. & Bradford Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835 (2020). That commentary extrapolates from eighteenth-century international-law principles and argues that the Constitution's use of the then-established term "States," supports the implicit application of a sweeping prohibition on differential treatment. *Id.* at 935-38. That view is unfounded. As the Constitution repeatedly makes plain, the federal government holds a position in relation to states that does not exist in international law. Under the Supremacy Clause, federal law is supreme. U.S. Const. art. VI, cl. 2.

**2. Equal-footing, Tenth-Amendment and separation-of-powers principles have no application here.**

State Petitioners further attempt to cobble together support for their theory from cases applying the equal footing, anti-commandeering, and separation-of-powers doctrines. State Br. 20-23. Petitioners improperly discard "the text, the substantive context, and the jurisprudential history of each of the individual ... doctrines" upon which they rely, coming up with an "entirely new creation" having "no textual basis." *Nuclear Energy Institute*, 373 F.3d at 1306.

The equal-footing doctrine applies "only to the terms upon which States are admitted to the Union." *South Carolina v. Katzenbach*, 383 U.S. 301, 328-29 (1966). The doctrine prohibits Congress from leveraging its admission power to

limit new states' sovereignty in ways that "would not be valid and effectual if the subject of congressional legislation after admission." *Coyle v. Smith*, 221 U.S. 559, 573 (1911). But it does not prohibit Congress from enacting legislation pursuant to its Commerce Clause authority, either at or after the time of admission, that would "operate to restrict the [admitted] state's legislative power." *Id.* at 574.

The anti-commandeering doctrine is also inapplicable. State Br. 21. That doctrine bars Congress from commanding state officials to administer or enforce a federal regulatory program. *Printz v. United States*, 521 U.S. 898, 935 (1997). The Clean Air Act imposes federal emission standards on automobile manufacturers. It then contains a preemption waiver allowing California to impose its own standards on manufacturers under state law. None of this commandeers the states.

Nor does Section 209 more broadly implicate the Tenth Amendment. The United States has undisputed power under the Commerce Clause to regulate motor-vehicle emissions and occupy the field. Thus, there is no "residual" state power in play here subject to "diminution." State Br. 22. Indeed, Petitioners would invert the Tenth Amendment, using it to expand federal power at the states' expense.

Petitioners' invocation of separation-of-powers principles also fails. State Br. 20-21. Separation-of-powers jurisprudence concerns the danger of one federal branch aggrandizing its power vis-a-vis another. *Freytag v. C.I.R.*, 501 U.S. 868,

878 (1991). That jurisprudence is irrelevant to whether the Constitution precludes Congress from reasonably distinguishing among states with respect to Commerce Clause preemption.

### **3. Petitioners’ proposed theory is impractical.**

Petitioners’ proposed theory is also unworkable. As an initial matter, the distinction Petitioners draw between laws that differentiate related to “sovereign authority,” and those that otherwise differentiate, is illusory. State Br. 26. Under Petitioners’ logic, for example, Congress could itself adopt a more stringent air pollution standard for California and apply it to vehicles sold in that State, while adopting another regime for the rest of the country. Thus, under their construct, the very same emissions regime could be created by Congress under federal law directly. But there is no constitutional basis for requiring that such a legislative result be achieved only through the *expansion* of federal power and preemption that Petitioners seek. Federalism principles support allowing Congress to place regulatory power closer to the people affected.

Moreover, Petitioners’ test is unadministrable. Even laws that do not facially differentiate between states can have unequal preemptive effects – for instance, a law about water conservation during droughts might effect conflict preemption of certain laws in drought-prone states but not other ones. Petitioners’ apparent view that such unequal preemptive effects *categorically* render laws

unconstitutional because of the affront to “political standing and sovereignty” lacks workable boundaries.<sup>8</sup>

Petitioners’ proposed new limitation, if adopted, would also be highly disruptive. It would implausibly call into question a wide swath of federal laws. *See supra* Argument II.A.1. For example, routine grandfathering of particular state laws – a time-honored legislative practice – would now be presumptively unconstitutional.

To the extent Petitioners ground their theory in concerns about political rent-seeking, and fair competition between states, State Br. 21-22, the Framers’ design was to allow those concerns to be addressed through the political process established by the Constitution. Moreover, their theory does little to address such concerns. Congress could just as easily pick favorites, for example, by subsidizing industries located within particular states or imposing different standards within them.

Petitioners try to mitigate the extreme implications of their theory by suggesting that laws that address “unique” concerns of states might be exempted from the *per se* bar. State Br. 26-27. That aspect of Petitioners’ theory poses its own problems. First, Petitioners’ proffered unique-concern exception would

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<sup>8</sup> If Petitioners’ theory applies only when a law *expressly* differentiates between states, they propose a constitutional test in which form would triumph over substance.

undercut their own challenge to Section 209(b). Applying that exception, Section 209(b) is constitutional because it *did* address California’s unique pollution challenges and pre-existing program. Indeed, on its face Section 209(b) applies equally to all states, and California is eligible for waivers only because it has the “unique” status of having standards in place prior to March 30, 1966.

To the extent Petitioners nonetheless dispute the “uniqueness” of California’s situation, that only underscores that their construct would be hopelessly vague in application. It is unclear what aspects of legislation – which could be complex and motivated by multiple congressional purposes – would be relevant to their “uniqueness” test. Further, under their proposed approach, presumably every instance of regional tailoring under the Commerce Clause would invite fact-intensive litigation over whether it rested on sufficiently “unique” concerns. Here Petitioners have never developed, and so have forfeited, any such factual arguments. *See Lake Carriers Ass’n*, 652 F.3d at 9, n.9 (arguments not raised in opening brief forfeited); *Plaquemines Port, Harbor & Terminal Dist. v. Fed. Mar. Comm’n*, 838 F.2d 536, 551 (D.C. Cir. 1988) (constitutional claims cannot be reached without adequate factual record).

In any event, Petitioners’ entire theory – including their unique-concern exception – is atextual. Nothing in the Constitution limits differential preemption treatment to situations where states have wholly “unique” concerns, which would



needlessly hamstring Congress's ability to address important national problems. Congress may permit some states to adopt different standards based on concerns that are more pronounced in the regions covered by those particular states, even if they are not "unique." In Section 209(b), Congress required that California have a "compelling and extraordinary" need for a waiver, thereby articulating a sufficient basis for differential treatment.

**D. Section 209(b) is constitutional as applied to the challenged waiver.**

Petitioners' argument, State Br. 30-33, that Section 209(b) is unconstitutional as applied to the challenged waiver also fails. Contrary to Petitioners' assertion, climate change *does* present "an acute California problem." State Br. 31; *see* 87 Fed. Reg. at 14365 (reflecting that California is one of the most climate-challenged regions of North America). Petitioners additionally ignore that the waived California standards will achieve significant reductions in conventional pollution and thereby help the State address its longstanding problems with excessive smog and soot. *See infra* Argument IV.B.2.

In any event, nothing in the Constitution precludes a state from mitigating climate-change threats, or Congress from allowing it to do so. Just like national governments, states are perfectly capable of taking steps to address environmental problems within their boundaries, even if the problems may also extend beyond them. And states, like the federal government, need not "resolve massive problems

in one fell regulatory swoop.” *Massachusetts v. EPA*, 549 U.S. 497, 524 (2007); *see also Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1107 (9th Cir. 2013) (California should be “encouraged to continue and to expand its efforts ... to lower carbon emissions”).

### **III. The Withdrawal Decision was an improper exercise of reconsideration authority.**

EPA appropriately rescinded the 2019 Withdrawal Decision as an improper exercise of the agency’s inherent reconsideration authority. EPA possesses such authority to reconsider its decisions under Section 209(b), subject to articulated reasonable limits in accordance with the statutory framework and relevant legal principles. EPA’s Restoration Decision concluded that the Withdrawal Decision failed to adhere to these limits, reopening a longstanding final adjudication to revise the conditions of California’s existing waiver without properly accounting for the disruptive impact of its action. EPA also determined that the Withdrawal Decision was legally improper, as addressed below, but this Court can, and should, sustain the Restoration Decision on this independent ground.

In the Restoration Decision’s first basis for rescission, EPA articulated reasonable boundaries for exercise of inherent reconsideration authority of waivers under Section 209(b), including that reconsideration could not look beyond the three statutory bases for denying a waiver specified by Congress, 87 Fed. Reg. at 14334; and that the Withdrawal Decision improperly advanced discretionary

changes in administrative policy, undermining Congress's intended deference to California's policy choices and the infrastructure of pollution-abatement efforts (and technology investments) in California and other states that Congress intended to be built on a waiver grant. *Id.* at 14348. The Withdrawal Decision was plainly premised on considerations beyond Section 209, *see infra* Argument IV.C, and on "retroactive application of discretionary policy changes," so EPA determined that it exceeded the proper scope of reconsideration under Section 209. 87 Fed. Reg. at 14350-51.

EPA also reasonably concluded that reconsideration on any grounds must fairly consider timeliness and reliance interests. 87 Fed. Reg. at 14350. As this Court has explained, "if there is to be any stability and fairness in administrative proceedings ... [agencies' reconsideration] power must be exercised both within a reasonable time after the issuance of a final departmental decision and without subjecting the parties affected by any undue or unnecessary hardships." *Nat'l Ass'n of Trailer Owners, Inc. v. Day*, 299 F.2d 137, 139-40 (D.C. Cir. 1962).

These concerns are especially potent in adjudications, where reconsideration risks introducing "immense degrees of uncertainty ... in settled expectations" of those operating under a granted waiver. 87 Fed. Reg. at 14350; *see U.S. Telecom Ass'n v. FCC*, 825 F.3d 674, 708-09 (D.C. Cir. 2016). In its Restoration Decision, EPA

concluded that the Withdrawal Decision failed entirely to take account of these concerns.

Petitioners claim these two determinations cannot be separated from the Agency's rejection of the Withdrawal Decision's substantive grounds for revoking the waiver, Fuel Br. 56-58, and that, in any case, EPA's articulation of the scope of its authority is wrong, *id.* at 58-63. But the Court need not answer that question or decide the proper scope of reconsideration under Section 209 to affirm EPA's determination that the Withdrawal Decision was procedurally flawed: even assuming, *arguendo*, that the Withdrawal Decision was permissible in scope, EPA reasonably concluded that the Withdrawal Decision failed to adequately assess how the waiver "engendered serious reliance interests," magnified by the passage of years. *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020). That error is not intertwined with the merits questions here, so the Court may affirm EPA's Restoration Decision on that basis alone.

On that matter, the record is clear. Evidence before EPA at the time established that the waiver standards were "vitally important" to existing short- and long-term plans to meet air quality requirements in numerous states, so waiver withdrawal risked significant consequences. 87 Fed. Reg. at 14346 & nn.112-114, 14351. Industry also warned of the reliance interests it had accrued over the preceding six years, with one coalition commenting that its members "have

invested billions of dollars with the well-founded expectation that increased demand for electric vehicles would be propelled by” the waiver. *Id.* at 14347; *see id.* at 14346 n.115, 14350-51.

As the Restoration Decision explained, the Withdrawal Decision summarily dismissed or deferred consideration of these interests. 87 Fed. Reg. at 14351-52. It declined altogether to weigh impacts on state air quality plans, claiming these concerns could be addressed later. 84 Fed. Reg. at 51324 n.167, 51338 & n.256. And it claimed no party had reasonable reliance interests in the California waiver because there was no “finality” in contemporaneous *federal* vehicle greenhouse-gas standards. *Id.* at 51335. But while EPA had committed to a “Mid-Term Evaluation” of its own vehicle standards, *id.* at 51334-36, nothing in California’s standards or the 2013 waiver conditioned California’s waiver on the outcome of EPA’s review, *see* 78 Fed. Reg. at 2137, 2128. Disclaiming any reliance interests was also contrary to the factual record before EPA, attesting to billions of dollars invested in actual reliance on EPA’s “final action” granting the waiver. *See Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162, 182 (D.C. Cir. 2022) (“[I]nvest[ing] hundreds of millions of dollars” after an agency order is “substantial evidence of reliance”).

Petitioners attempt to dismiss this failure in one paragraph, claiming, without support, that reliance interests are a “lesser concern” where EPA’s

decision “reduces regulatory obligations,” and that the Withdrawal Decision “reasonably explained” why reliance interests were irrelevant. Fuel Br. 63. Neither is a plausible response – the latter because the record demonstrates otherwise; the former because the industry’s reliance-backed investments were no less disrupted by the fact that they were no longer obligatory, and because California and the Section 177 states saw their “flexibility” to address pollution concerns, *see id.*, diminished, not increased. *See* S. Rep. No. 90-403, at 730 (noting that automakers make decisions “far in advance” so “obtain[ing] clear and consistent answers concerning emission controls and standards is of considerable importance”); H.R. Rep. No. 90-728, at 21 (same); *see also U.S. Telecom Ass’n*, 825 F.3d at 746-47 (Williams, J., concurring in part and dissenting in part).

Petitioners’ objection to EPA’s consideration of the timeliness of the Withdrawal Decision also fails. At a minimum, reopening the waiver a full six years later meant reliance interests were far more entrenched and, therefore, especially unreasonable to ignore. Moreover, Petitioners cite no authority for their counterintuitive assertion that timeliness matters only where private rights are at issue. And their claim that timeliness is relevant only to reconsiderations with retroactive effect ignores that the Withdrawal Decision *did* purport to have such effect. Fuel Br. 60; *see* 84 Fed. Reg. at 51337 n.253.

The Withdrawal Decision improperly disregarded substantial evidence in the record as to its disruptive effects and failed to establish that such concerns could be overcome, let alone lawfully ignored. That failure requires reinstatement of the 2013 waiver, whether or not the Withdrawal Decision was otherwise within the bounds of EPA's reconsideration authority and independent of the Court's view of the Restoration Decision's other grounds.

**IV. EPA reasonably concluded that the Withdrawal Decision was legally and factually flawed, and so must be rescinded.**

Even if the Withdrawal Decision was a proper exercise of reconsideration authority, EPA reasonably concluded that the Withdrawal Decision's legal interpretation was at odds with the Clean Air Act's text and history, and that its factual conclusions ignored record evidence demonstrating California's need for its standards. EPA also properly rejected the Withdrawal Decision's reliance on EPCA. EPA's judgments should be upheld.

**A. EPA's 2013 waiver reasonably interpreted Section 209's waiver criteria, and the Withdrawal Decision's contrary interpretation was legally unfounded.**

**1. EPA's traditional interpretation of Section 209 is consistent with the statutory text, congressional purpose, and EPA's historical practice.**

In the 2013 waiver, EPA applied its longstanding whole-program interpretation of Section 209 and determined, under the second waiver criterion, that "California continues to have compelling and extraordinary conditions giving

rise to a need for its own new motor vehicle emission program.” 78 Fed. Reg. at 2131. Six years later, the Withdrawal Decision overturned this determination based on a novel legal interpretation that not only rejected 50 years of EPA practice, but strained the statutory text and undermined Congress’s intent. *See* 84 Fed. Reg. at 51341. EPA’s Restoration Decision properly reinstated its traditional interpretation, which reflects the best reading of Section 209, so EPA’s action should be upheld.

Statutory interpretation begins with “a careful examination of the ordinary meaning and structure of the law itself.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). Here, the text and structure of Section 209 dictate EPA’s reinstated approach. Section 209(b)(1) states that EPA “shall” grant a waiver “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). Section 209(b)(1) then lists the three criteria on which a waiver can be denied. *Id.* § 7543(b)(1)(A)-(C).

The second waiver criterion, at issue here, states that no waiver shall be granted where EPA finds that “such State does not need such State standards to meet compelling and extraordinary conditions.” *Id.* § 7543(b)(1)(B). The Withdrawal Decision claimed that this text could be read to impose a “standard-by-standard” analysis – requiring EPA to assess whether California needs particular



standards to address pollution challenges and allowing EPA to reject any individual standard that does not independently meet that test. *See* 84 Fed. Reg. at 51341, 51344-45, 51348. This interpretation is at odds with the text.

EPA is required to assess California's need for "*such* State standards," where "such" means "of the character, quality, or extent *previously indicated or implied*." <https://www.merriam-webster.com/dictionary/such> (emphasis added); *see* "Such," Black's Law Dictionary (4th ed., revised 1968) ("Of that kind, having particular quality or character specified ... Identical with, being the same as what has been mentioned"); *Nieves v. United States*, 160 F.2d 11, 12 (D.C. Cir. 1947) (holding that benefits for those "in the active service" after a specified date who were injured "in such service" excluded those injured before that date because "[t]he word 'such' is restrictive in its effect and obviously relates to an antecedent"). No antecedent exists in the text for the phrase "*such* State standards" in Section 209(b)(1)(B) except the *aggregate* State standards discussed in Section 209(b)(1). *See* 42 U.S.C. § 7543(b)(1); 87 Fed. Reg. at 14343; 49 Fed. Reg. at 18889. The meaning of the second waiver prong is therefore clear: EPA can deny a waiver only where it finds California does not continue to need its whole program of separate standards – considered in the aggregate – to meet compelling and extraordinary conditions.

The traditional interpretation’s focus on whether California needs a separate vehicle program not only honors the text, but best effectuates Congress’s choice to “permit California to blaze its own trail with a minimum of federal oversight.”

*Ford Motor Co.*, 606 F.2d at 1297; 87 Fed. Reg. at 14360, 14362 n.286. Congress “sharply restricted” EPA’s role in reviewing California’s waiver requests, *MEMA I*, 627 F.2d at 1121 – directing that “California’s regulations ... are presumed to satisfy the waiver requirements,” *id.*, and placing the “burden” on EPA “to show why California ... should not be allowed to go beyond the Federal limitations in adopting and enforcing its own standards.” H.R. Rep. No. 90-728, at 97; *see* 87 Fed. Reg. at 14341-43.

As EPA explained nearly 40 years ago, whole-program review also reflects “that in creating an exception to Federal preemption for California, Congress expressed particular concern with the potential problems to the automotive industry arising from the *administration* of two programs. ... [T]he ‘need’ issue thus went to the question of standards in general, not the particular standards for which California sought a waiver in a given instance.” 49 Fed. Reg. at 18890 (cleaned up).

The traditional interpretation, and Congress’s original intent, were confirmed and ratified by the 1977 Clean Air Act amendments, which further broadened California’s flexibility by adding “in the aggregate” to Section

209(b)(1). *See* Pub. L. No. 95-95, title II, §§ 207, 221, 91 Stat. 755, 762. At the time, EPA had been reviewing California’s “need” for its whole program for a decade. *See, e.g.*, 40 Fed. Reg. 23102, 23103-04 (May 28, 1975); 33 Fed. Reg. 10160, 10160 (July 16, 1968). Congress noted EPA’s practice with approval, explaining that EPA “has liberally construed the waiver provision so as to permit California to proceed with its own regulatory *program*,” and that its amendments were “intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, *i.e.*, to afford California the *broadest possible discretion* in selecting the best means to protect the health of its citizens and the public welfare.” H.R. Rep. No. 95-294 at 301-02 (emphasis added). “Where ... Congress has not just kept its silence by refusing to overturn the administrative construction, but has ratified it with positive legislation” – as in the 1977 amendments – “we cannot but deem that construction virtually conclusive.” *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 846 (1986) (internal quotation omitted).<sup>9</sup>

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<sup>9</sup> Petitioners are incorrect that the 1967 provision “indisputably” required California to demonstrate its “need” for individual standards. Fuel Br. 48-49. The original requirement that each standard be more stringent than any federal counterpart did not foreclose whole-program review, albeit more stringent, as contemporaneous waivers demonstrate. In any case, the 1977 amendments ensured whole-program review by adding “in the aggregate” and the word “such” in “such State standards.”

The historical consistency of EPA’s traditional approach also supports the Restoration Decision. *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 274-75 & n.5 (1974). Over more than 75 waivers and 55 years, EPA has deviated only twice – in a 2008 passenger-vehicle waiver and the Withdrawal Decision – and both times EPA promptly corrected its error. *See supra* Statement of the Case II.A.2, II.B.3; 87 Fed. Reg. at 14360 n.261; 49 Fed. Reg. at 18889-90 (discussing the traditional interpretation).

EPA’s return to the traditional interpretation also accords with this Court’s precedent. In *American Trucking Ass’n v. EPA*, 600 F.3d 624 (D.C. Cir. 2010), this Court construed Section 209(e)(2), which mirrors Section 209(b). *See* 42 U.S.C. § 7543(e)(2). EPA reiterated before the Court that, per its traditional interpretation of Section 209(b)(1)(B), it read “such ... standards” in Section 209(e)(2) to refer to “California’s program as a whole” rather than individual standards. Resp. Br. 23-24, 2009 WL 2842726 (Aug. 31, 2009); *see* 59 Fed. Reg. 36969, 36982 (July 20, 1994). The Court concluded (without extensive discussion) that the “expansive statutory language” provided “no basis to disturb EPA’s reasonable interpretation of the second criterion.” *Am. Trucking Ass’n*, 600 F.3d at 627.

Petitioners provide no answer to the traditional interpretation’s harmony of statutory text, purpose, history, and precedent. They contend that the reference to

“aggregate” review in Section 209(b)(1) does not justify aggregate review in the second and third waiver prongs, since the qualifier “in the aggregate” does not appear in subsections (b)(1)(B) and (b)(1)(C). Fuel Br. 48. But the phrase “*such* State standards” refers back to the same standards previously indicated. Having employed that phrase, Congress did not have to refer to “any” standards or to California’s vehicle “program.” Fuel Br. 45.

Indeed, Petitioners, like the Withdrawal Decision, fail to plausibly explain the role of the term “such” in the statutory text. *See* 84 Fed. Reg. at 51341-42. Petitioners wishfully claim “such State standards” refers to the particular standards “for which [California] is presently seeking a waiver.” Fuel Br. 45-46. But the text they cite does not describe a group of standards under review. It defines the states to whom Section 209(b) applies: “any State which has adopted standards ... prior to March 30, 1966.” 42 U.S.C. § 7543(b)(1). Indeed, there is no reference at all to particular standard submissions in the cited text or anywhere else in Section 209(b)(1). To the contrary, Section 209(b)(1) states that EPA shall “waive application of [the preemption provision] to [the] *State*,” not some subset of standards, and then clarifies that the substantive terms of waiver depend upon consideration of “the State standards ... in the aggregate,” *id.* (emphasis added). Moreover, if EPA had reviewed California’s “specific waiver request,” Fuel Br. 46, it could not have denied a waiver in any case: the Advanced Clean Cars waiver

submission encompassed standards for numerous pollutants and was plainly necessary to meet compelling and extraordinary conditions. *See* 78 Fed. Reg. at 2114.

Petitioners also err in suggesting that aligning the meaning of “State standards” in subsections 209(b)(1) and (b)(1)(B) creates a conflict with its meaning in 209(b)(1)(C) – which requires that “such State standards” be consistent with other Clean Air Act provisions on technological feasibility. *See* 84 Fed. Reg. at 51345; Fuel Br. 46-47; 42 U.S.C. § 7521(a). Petitioners ignore that their reading would create the same inconsistency between 209(b)(1) and subsections (b)(1)(B) and (C), requiring that “State standards” mean all California standards when used in (b)(1) but only particular standards when used in (b)(1)(B) and (C). More significantly, the record does not support Petitioners’ claim, or the Withdrawal Rule’s passing assertion, that the “settled interpretation” of Section 209(b)(1)(C) provides for EPA review of the particular standards at issue. *Id.* To the contrary, EPA has traditionally interpreted the third waiver criterion’s feasibility analysis as a whole-program assessment, 87 Fed. Reg. at 14361 & n.266 – one that ensures manufacturers have sufficient lead-time to comply with the program’s standards as a whole, accounting for the interactions between new and existing standards.<sup>10</sup> *See*

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<sup>10</sup> As a practical matter, EPA’s consideration of the third waiver prong, like the first waiver prong, does not always require reassessment of previously-approved aspects of California’s program – for example, where new and existing standards

78 Fed. Reg. at 2117; 87 Fed. Reg. at 14356 n.212 (quoting commenters explaining that feasibility “cannot be evaluated on its own if there are interactions with pre-existing standards”); *cf. MEMA II*, 142 F.3d at 463-64.

Petitioners are also incorrect that EPA’s reading makes the second waiver prong “meaningless.” Fuel Br. 46. California has yet to resolve its pollutant problems, but that does not mean it will never do so or that Congress could not aim for that goal. *See* 87 Fed. Reg. at 14336 n.22. So long as those problems persist, however, EPA’s affirmance of California’s need for a separate vehicle program allows California to continue to serve as a “laboratory” for resolving its own pollution problems and those of the entire nation. *See MEMA I*, 627 F.2d at 1109-11.

Meanwhile, Petitioners’ interpretation would create a fatal inconsistency in the statutory text. If EPA were required to reject any individual standard that it found California did not “need” to “meet compelling and extraordinary conditions,” EPA could not, in fact, approve the inclusion of any individual standard in California’s vehicle program that is less stringent than a corresponding federal standard, and so might “be found to be contributing to rather than helping” pollution problems if considered “in isolation.” 87 Fed. Reg. at 14353 (citing 1983

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obviously will not interact. But where a new waiver request might affect previous assessments, EPA reviews the program as a whole, or any aspects necessary to confirm alignment with the statutory text. 87 Fed. Reg. at 14361 & n.266.

and 1994 EPA waivers). But the protectiveness analysis in Section 209(b)(1) was explicitly expanded in 1977 to allow California to do just that. *See supra* Statement of the Case I.A.1; 42 U.S.C. § 7543(b)(1); *MEMA II*, 142 F.3d at 464. This Court should not countenance an interpretation that would void the “aggregate” protectiveness test. *See Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1939 (2022).

Likewise, Petitioners’ “standard-by-standard” interpretation lacks any principled basis for segregating review of standards that have interrelated or cooperative purposes, address more than one pollution problem, and or address pollution problems that interact. That confusion is evident throughout the Withdrawal Decision. *See, e.g.*, 84 Fed. Reg. at 51341 n.263; *infra* Argument IV.B.2.

In the end, Petitioners’ effort to conjure textual ambiguities and read them as statutory limits depends on their view that Congress could only have intended Section 209(b) to confer “narrow” authority that limited “unnecessary deviation” from national standards. *Fuel Br.* 2, 3, 18. But Petitioners cannot explain how that depiction of congressional intent aligns with Congress’s actual expressions of its intent. Congress emphasized California’s special status as a pioneer in the field and a continued “testing ground” for the nation’s benefit, S. Rep. No. 90-403, at 33; H.R. Rep. No. 95-294 at 301, and described its enactments as “liberalizing and



extending” California’s waiver, 123 Cong. Rec. 27071 (1977), to ensure that EPA was “require[d] ... in most instances to waive the preemption,” H.R. Rep. No. 95-294, at 23. “[T]here must be evidence that Congress meant something other than what it literally said before a court can depart from plain meaning,” *Cigar Ass’n of Am. v. FDA*, 5 F.4th 68, 79 (D.C. Cir. 2021) (internal quotation omitted), but that is clearly not the case here. EPA’s interpretation may, therefore, be affirmed even without consideration of the deference due the Agency. *Guedes*, 45 F.4th at 313. But at a minimum, EPA’s construction is reasonable and may be sustained as such. *See, e.g., Washington All. of Tech. Workers*, 50 F.4th at 192.

**2. No aspect of the text or context requires Section 209(b) to be interpreted to exclude state greenhouse-gas regulation as a matter of law.**

Petitioners also claim that despite its broad purpose and deferential structure, Section 209(b) implicitly preserved preemption of California’s authority to regulate vehicle greenhouse-gas emissions. But there is no basis for Petitioners’ atextual suggestion that Congress intended a pollutant-specific meaning of “compelling and extraordinary conditions.” Fuel Br. 27-34.

To begin, the statutory text includes no references to pollutants, let alone specific pollutants. While Congress highlighted California’s criteria pollutant problems as one basis for enacting Section 209, *id.* at 31-32, Congress also sought to create a “laboratory” for vehicle policy and technology. *See, e.g., MEMA I*, 627

F.2d at 1110-11; *Engine Mfrs. Ass’n*, 88 F.3d at 1079-80. This purpose animated its decision to give California the “broadest possible discretion” to regulate vehicle emissions. H.R. Rep. No. 95-294, at 301-02.

Petitioners claim that Congress’s desire for innovation speaks to why there is a waiver program, not the standards California may adopt. Fuel Br. 35. But nothing in the statutory text suggests that Congress meant to allow California to expand the technologies employed but not the pollutants addressed – which have already expanded beyond those regulated in 1967. *See, e.g.*, 49 Fed. Reg. at 18890; *cf. MEMA I*, 627 F.2d at 1110 & n.31 (concluding that Congress intended California to “adopt an entire program of emissions control,” not just “a portion”). In any case, the particular meteorological and topographical features Congress highlighted as pertinent “conditions” in 1967 would support greenhouse-gas standards because greenhouse gases exacerbate ozone response under those conditions. *See supra* Statement of the Case II.A.1.

Furthermore, even if Petitioners could support their assertion that Congress sought to “minimize unnecessary deviation” from federal standards, Fuel Br. 18, allowing waivers for greenhouse-gas standards does not widen the deviation from a uniform national fleet. Section 209 allows California to develop a “California car” that is distinct from the “federal car,” an exception from uniformity that does not

change based on what (or how many) specific standards California includes. *See Engine Mfrs. Ass’n*, 88 F.3d at 1080.

Petitioners err next in ascribing unduly narrow meanings to the specific terms used in the second waiver criterion. First, “extraordinary” is not limited to meaning most unusual or unique. Petitioners’ authorities define it as “[b]eyond what is ordinary, usual, or common place.” *Fuel Br.* 28 (citing *American Heritage Dictionary*); *see* “Extraordinary,” *Black’s Law Dictionary* (4th ed. 1951) (“Out of the ordinary; exceeding the usual, average, or normal measure or degree,” etc.). Congress’s characterization in 1967 was that California’s separate standards were “justif[ied]” because California’s conditions were “*sufficiently different* from the Nation as a whole,” H.R. Rep. No. 90-728, at 21; S. Rep. No. 90-403, at 33 – not *entirely* or *totally* different.

This was reinforced by Congress’s enactment of Section 177, which allows other states struggling to meet federal air quality standards to adopt California’s standards. 42 U.S.C. § 7507; *see* H.R. Rep. No. 95-294, at 14. Section 177 shows that Congress not only understood that California’s pollution challenges were not unique in every respect but in fact intended California to address pollutant problems shared by other states.<sup>11</sup> 87 Fed. Reg. at 14357, 14359.

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<sup>11</sup> Petitioners’ suggestion that Section 177 is directed at criteria pollution, and therefore should be read to limit California’s authority to address greenhouse-gas emissions, is off the mark. *See Fuel Br.* 30-31. Section 177 imposes no constraints

Nor would defining “extraordinary” to mean “sufficiently different from the Nation as a whole” create redundancy with the term “compelling.” Fuel Br. 30. “Compelling” conditions may still be broadly or universally experienced, so EPA’s reading of “extraordinary” places a distinct constraint. It is unclear, meanwhile, how Petitioners would delineate what constitutes a “most unusual” or “unique” pollution problem when such problems exist on a broad spectrum. Nor do Petitioners explain how a “uniqueness” test would function where a standard addresses multiple pollution problems of differing character. Fuel Br. 27-33.

Petitioners’ arguments are similarly unavailing with respect to the words “need” and “meet.” Petitioners contend that greenhouse-gas standards categorically fail Section 209(b)(1)(B)’s requirement that California “need” its standards “to meet” compelling and extraordinary conditions, because its standards will not “meaningfully address” the global-level problem of climate change. Fuel Br. 4, 30, 38-44. But that argument presupposes that greenhouse-gas standards must be considered separately under Section 209; under the traditional interpretation, there is no dispute that California “needs” its program to “meet” compelling extraordinary conditions and that EPA has given effect to those terms, *see id.* at 39-41, 35-36.

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on the pollutants addressed by vehicle-emissions standards. Congress has affirmed states’ authority to adopt greenhouse-gas standards and zero-emission standards under Section 177. *See infra* at 76.

As discussed, any requirement to consider the “need” for individual standards would directly and improperly conflict with the “aggregate” protectiveness determination that Congress deliberately added to Section 209(b)(1) in 1977. *See supra* Argument IV.A.1. Petitioners cannot claim, therefore, that “need” and “meet” have no meaning except to set a bar for the efficacy of individual standards. Fuel Br. 35-36, 41. On the contrary, “need” and “meet” would foreclose EPA from granting a waiver if California failed to show that its vehicle program bore a relationship to addressing the state’s compelling and extraordinary conditions.<sup>12</sup>

Moreover, the statute does not require that California demonstrate any particular quantum of improvement from California’s standards either individually or collectively. As this Court explained in *Ford Motor Co. v. EPA*, “[t]here is no indication in either the statute or the legislative history that ... the Administrator is supposed to determine whether California’s standards are in fact sagacious and beneficial.”<sup>13</sup> 606 F.2d 1293, 1302 (D.C. Cir. 1979). Accordingly, “since the

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<sup>12</sup> Nor is the fuel waiver provision instructive. *See* Fuel Br. 36 (citing 42 U.S.C. § 7545(c)(4)(B)). That provision is not a “blanket exemption”; it applies only if California has already shown a “need” under Section 209(b).

<sup>13</sup> Indeed, whether individual California standards may be “unrelated, disruptive, or ineffectual,” Fuel Br. 46, is not properly EPA’s concern. California remains accountable to its voters and its courts just like any other state exercising state authority. *See MEMA I*, 627 F.2d at 1105.

inception of the waiver program,” EPA has established that the magnitude of air quality improvement is “not legally pertinent ... under section 209.” 36 Fed. Reg. 17458 (Aug. 31, 1971); 87 Fed. Reg. at 14366.

Limiting waivers in the manner suggested by Petitioners would also create an illogical result: the more intractable California’s air quality problem, the less authority the State would possess to address it. But the fact that pollutant reductions, including greenhouse-gas reductions, may appear small compared to the enormity of the problem does not render reduction efforts meaningless or inessential, nor place an issue beyond state concern. It is perfectly ordinary English to say some effort is “needed” to “meet” a problem if that effort contributes to the solution. The Supreme Court has already affirmed as much with respect to motor-vehicle greenhouse-gas emissions, validating states’ legitimate interest in “small incremental step[s]” to combat climate change even where they do not resolve the underlying problem. *Massachusetts v. EPA*, 549 U.S. at 524-26; 87 Fed. Reg. at 14366 n.322; *see, e.g., Am. Fuel & Petrochemical Mfrs. v. O’Keeffe*, 903 F.3d 903, 913 (9th Cir. 2018) (“combating” climate change is within state police power). And in any event, Congress intended California’s program to drive innovation; incremental efforts to address vehicle emissions are “needed” now to potentially enable greater reductions in the future.

Here, California's passenger vehicles contribute about 25% of the State's greenhouse-gas emissions.<sup>14</sup> The standards included in the 2013 waiver were estimated to reduce light-duty vehicle greenhouse gases by about 4.5% per year, 87 Fed. Reg. at 14366, or almost 14 million metric tons annually by 2025, 78 Fed. Reg. at 2122. The magnitude of these reductions is plainly "meaningful."<sup>15</sup>

Lastly, Petitioners have only implausible responses to evidence that Congress understood California's authority to include zero-emission vehicle and greenhouse-gas standards. Clean Air Act Section 7586(f)(4), added in 1990, instructs EPA to define "clean-fuel vehicle" credits in consideration of "standards which are established by the State of California for [Ultra-Low Emission Vehicles] and [Zero-Emissions Vehicles]." 42 U.S.C. § 7586(f)(4). Section 13212(f)(3)(B), added in 2007, requires EPA's guidance for minimum federal fleet standards to account for "the most stringent standards for vehicle greenhouse gas emissions applicable to and enforceable against motor vehicle manufacturers for vehicles sold anywhere in the United States." *Id.* § 13212(f)(3)(B). Petitioners claim these

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<sup>14</sup> LEV III Mobile Source Emissions Inventory at T-1, EPA-HQ-OAR-2012-0562-0371 (attachment 11), JA\_\_\_\_.

<sup>15</sup> Petitioners cite the Withdrawal Decision's statement that more stringent vehicle standards would "reduce global temperature by 0.02 degrees Celsius in 2100," 84 Fed. Reg. at 51340, as evidence that California's standards will have no impact. Fuel Br. 41-42. But it is equally reasonable to conclude that the capacity for a *single* regulatory program in a *single* U.S. state to measurably impact *global* average temperature is a remarkably significant result.

provisions only allow consideration of California's or another state's "procurement standards" for "*state-owned* fleets." Fuel Br. 36-37. But that makes little sense in context.

The same section of the 1990 Clean Air Act amendments that added Section 7586(f)(4) also added Sections 7583(f), 7581(4), and 7584 – all of which refer to the "Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board." *See* Pub. L. No. 101-549, Title II, § 229(a), 104 Stat. 2511, 2514, 2519, 2520; 42 U.S.C. §§ 7583(f), 7581(4), 7584. It strains credulity to believe Congress, in a single section of its bill where it had already discussed California's Low-Emission Vehicle program, somehow intended its reference to "standards which are established for the State of California for [Ultra-Low Emission Vehicles] and [Zero-Emission Vehicles]" to mean in-state procurement policies and not the low- and zero-emission vehicle standards included as part of California's referenced vehicle program. *See* 87 Fed. Reg. at 14360; *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. N.Y. State Dep't of Env't Conservation*, 17 F.3d 521, 537 (2d Cir. 1994) (these sections reflect "Congress' recognition ... of California's [Low-Emission Vehicle] program, *including the [Zero-Emission Vehicle] mandate*" (emphasis added)).

Next, while Section 13212(f)(3)(B) does not refer to California specifically, it is equally implausible to believe that Congress's reference to "standards ...



enforceable against motor vehicle manufacturers” meant enforceable procurement contracts, *see* 84 Fed. Reg. at 51322, Fuel Br. 37, and not actual regulatory emission standards adopted by California and authorized by Section 209. *See* 87 Fed. Reg. at 14360. Indeed, it does not appear California even *had* in-state procurement policies governing vehicle emissions in either 1990 or 2007 when Congress passed these laws. *Cf.* Cal. Pub. Res. Code § 25722.8 (setting fuel-efficient-vehicle procurement standards effective January 1, 2008).

And Petitioners notably omit any mention of Congress’s recent action in the Inflation Reduction Act, Pub. L. No. 117-169, tit. VI, Subtitle A, § 60105(g), 136 Stat. 1818, 2068-69 (2022), which provided \$5 million for EPA to issue grants to states specifically to support their adoption of California’s greenhouse-gas and zero-emission vehicle standards under Section 177. *Id.* This enactment leaves no space for Petitioners’ argument that Congress has not affirmed adoption of greenhouse-gas or zero-emission vehicle standards under Section 209; Congress has, in fact, both expressly acknowledged and supported those standards.<sup>16</sup>

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<sup>16</sup> This is on top of billions of dollars to advance the nation’s zero-emission vehicle manufacturing and infrastructure, undermining Petitioners’ associated claims that Congress has not pressed for vehicle electrification. *See* Pub. L. No. 102-486, § 403, 106 Stat. 2776, 2876 (1992); Pub. L. No. 117-58, 135 Stat. 429, 1421 (2021); Pub. L. No. 117-169, §§ 13401-02, 50142, 60101, 136 Stat. 1818, 1954-65, 2044, 2063 (2022).

**3. Neither the major questions doctrine nor the federalism canon dictates a narrower interpretation of Section 209.**

Petitioners attempt to rehabilitate their atextual reading of Section 209 by resorting to substantive doctrines of interpretation that have no application to a provision that preserves, rather than usurps, state rights. Neither the major questions doctrine nor the federalism canon can be relied upon here to override the plain text of Section 209.

First, Petitioners argue the Court should apply the major questions doctrine to cabin California’s sovereign powers in favor of comprehensive federal authority. Fuel Br. 22-27. The major questions doctrine is inapplicable because it concerns the relationship between federal legislative and federal administrative power. It depends on a presumption that the Framers intended Congress “to make major policy decisions itself.” *West Virginia v. EPA*, 142 S. Ct. 2587, 2609, 2616 (2022). As such, the doctrine posits that in certain “extraordinary cases,” *id.* at 2608, Congress should not be presumed to delegate its own authority over matters of “vast economic and political significance” to federal agencies in the absence of clear statutory authorization. *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (“*UARG*”).

These concerns have no logical connection to provisions that preserve state authority. There is no constitutional concern that would necessitate using “exceedingly clear language” when Congress chooses *not* to preempt a state’s

sovereign power. To the contrary, canons of construction generally favor the preservation of state authority. *See infra* at 82-83. California’s regulation of vehicles sold within its borders is not a question of the distribution of power between Congress and federal agencies, nor does it run afoul of arguments that significant matters of policy should be reserved to the “people’s elected representatives,” ideally in “governments more local ... than a distant federal authority.” *West Virginia*, 142 S. Ct. at 2617, 2618 (Gorsuch, J., concurring) (internal quotation omitted). As such, the major questions doctrine has no footing in this dispute.

Moreover, Petitioners’ arguments for the doctrine’s application do not hold together. Petitioners’ invocation of supposed congressional (in)action on vehicle electrification as evidence of a “major question” to which Congress has not clearly spoken, *Fuel Br.* 24-26, is misplaced for the reasons above: the doctrine is concerned with questions of federal policy, not what states may do with the power reserved to them. Nor do Congress’s decisions about national policy speak to what policies are appropriate at a state level. Section 209(b) is built on the premise that California’s assessment of the appropriate balance of harms, costs, and other factors informing its vehicle policies is likely to differ from the appropriate balance nationwide. *MEMA I*, 627 F.2d at 1111. In any case, Congress’s *enactments* are

the truest evidence of its intent.<sup>17</sup> As discussed, the text and history of Section 209, as well as recent legislation, demonstrate that Congress clearly intended California to have this broad authority. *See supra* at 76 & n.16.

Invoking the major questions doctrine on the basis of purportedly substantial costs and impacts of state controls on state vehicles also makes little sense. Absent congressional action to preempt (some) state authority in the first place, all states would have police power authority to regulate vehicles, even where those state regulations might have great “economic and political significance” for industries operating in their state. *See West Virginia*, 142 S. Ct. at 2608. This was the state of play before Section 209(a) was passed, and for California, that authority remains grandfathered into the Clean Air Act. Section 209 does not permit California to exercise authority “delegated” from EPA, *see* Fuel Br. 19; it requires EPA to waive preemption, consistent with Congress’s direction, so that the State may exercise the sovereign authority it already possesses.

In any case, the 2013 waiver at issue does not represent an expansion of California’s influence over the vehicle industry. In 1967, Congress preserved

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<sup>17</sup> Congress’s enactment of the Renewable Fuel Standard program does not foreclose California’s zero-emission vehicle or greenhouse-gas standards. *See* Fuel Br. 26. Rather, that program’s savings clause forecloses Petitioners’ argument. 42 U.S.C. § 7545(o)(12). Moreover, non-liquid renewable fuels, including electricity, have been recognized under the program since 2010. *See* 75 Fed. Reg. 14670, 14729 (Mar. 26, 2010).

California's authority to create a "second vehicle" available for sale in California. *See MEMA II*, 142 F.3d at 453. California's successive decisions as to *what* standards govern the design of that second vehicle have not altered the division of authority or assumed control of any greater share of the vehicle industry than was always allowed.

Nor was the 2012 waiver submission California's first set of vehicle regulations for greenhouse gases or its first deployment of a zero-emission vehicle standard – the latter appearing in California's vehicle program since 1990. 58 Fed. Reg. 4166, 4166 (Jan. 13, 1993); *see Motor Vehicle Mfrs. Ass'n*, 17 F.3d at 534, 536. And it plainly was not EPA's first application of whole-program review under Section 209. This is in marked contrast to the assertions of federal authority rejected in cases where the federal agency was described as asserting "unheralded" regulatory power and taking actions that were "remarkable" or "radical" departures from previous actions. *See West Virginia*, 142 S. Ct. at 2610; *Nat'l Fed'n of Indep. Bus. v. OSHA*, 142 S. Ct. 661, 666 (2022); *UARG*, 573 U.S. at 324. EPA's continuation of a longstanding practice is hardly the "extraordinary case[]" warranting application of the major questions doctrine. *West Virginia*, 142 S. Ct. at 2608.

Fuel Petitioners' claim that a clear statement rule is necessary here to rein in expansive state power is also illogical because both the Withdrawal Decision and

Petitioners have acknowledged that California’s criteria pollutant problems justify separate state standards at least as to those pollutants, and those separate standards undisputedly can have significant consequences. Fuel Br. 6-7, 8; 84 Fed. Reg. at 51341 n.261 (affirming California’s waiver for criteria pollutant standards). Even applying clear-statement rules as Petitioners suggest, California would retain authority to regulate vehicle emissions, including through its longstanding zero-emission vehicle standard, and those regulations will drive innovations like increasing in-state fleet electrification. *See Motor Vehicle Mfrs. Ass’n*, 17 F.3d at 536 (describing California’s “technology-forcing” zero-emission vehicle standard for criteria pollutants). The purportedly substantial consequences Petitioners have claimed signify a major question, Fuel Br. 23-24, thus have no nexus to the question of statutory interpretation for which Petitioners have invoked this doctrine. Similarly, Congress provided any necessary clear statement by clearly leaving California the ability to set its own vehicle-emission standards, with no need to set forth separate clear statements for every pollutant.<sup>18</sup>

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<sup>18</sup> Notably, Petitioners’ allegedly major “nationwide” consequences, to the extent they exist, *see supra* Argument I.A.1, are largely attributable to Congress’s enactment of Section 177, which sets aside preemption for *other* states adopting California standards. *See* Fuel Br. 23-24; 42 U.S.C. § 7507. That separate provision is not challenged here, was not at issue in the Restoration Decision, and concerns state choices over which EPA has no approval authority.

The federalism canon is also inapplicable here, as it is directed at ensuring appropriate limits on federal (not state) authority, and in particular that federal authority does not “intrude[]” on traditional state powers. *E.g.*, *Bond v. United States*, 572 U.S. 844, 860 (2014). Petitioners assert that vehicle greenhouse-gas regulation is so significant it should be reserved for federal authority. *See, e.g.*, Fuel Br. 4, 29-30. But invoking the federalism canon to ensure the Court favors *federal* power over state power – as Petitioners do – gets matters entirely backwards.

Petitioners’ specific claim that allowing state regulation of greenhouse gases “would radically depart from the ‘usual constitutional balance of federal and state powers’” is wrong. Fuel Br. 21. Numerous state laws, like clean energy mandates and carbon-pricing schemes, limit greenhouse gases notwithstanding their potential to indirectly affect state, regional, and national industries.<sup>19</sup> Nor does California’s regulatory program here depart from the actual balance of federal and state power under Section 209. As noted above, even Fuel Petitioners’ preferred reading of Section 209(b) would preserve California’s power to require manufacturers to produce a “second vehicle” for sale in California – including zero-emission vehicles.<sup>20</sup> Indeed, the balance of federal and state power under Section 209

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<sup>19</sup> *See, e.g.*, <https://www.c2es.org/content/state-climate-policy/>.

<sup>20</sup> Fuel Petitioners’ preferred construction would not exclude zero-emission vehicles employed to address criteria pollution; their only argument against the

already includes California regulation of vehicle greenhouse gases, with these Petitioners having consistently declined to challenge that authority through multiple waiver grants – *including when the 2013 waiver was granted*. See 87 Fed. Reg. at 14347 n.118. Maintaining the actual regulatory balance of more than a decade and a half is hardly a “radical[]” re-balancing.

The canon of constitutional avoidance also does not justify diverging from the Act’s plain text. Fuel Br. 53-55. Petitioners fail to demonstrate that EPA’s interpretation of Section 209 raises “serious constitutional doubts.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018); *see supra* Argument II. Nor have they demonstrated how the Court could avoid purported doubts by resort to another interpretation of the statute. As discussed, Fuel Petitioners’ proposed interpretation is not a “fairly possible” reading of Section 209, given its disjunction with the statute’s text and operation. *United States v. Davis*, 139 S. Ct. 2319, 2332 (2019). Moreover, Fuel Petitioners rely on State Petitioners’ constitutional arguments here, which would render *all* possible interpretations of Section 209(b) unconstitutional, including the one advanced by Fuel Petitioners. Fuel Br. 53; *supra* Argument II.

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zero-emission vehicle standard in this waiver is that it purportedly does not result in those criteria pollutant reductions, which is incorrect. See Fuel Br. 51; *infra* Argument IV.B.2.



**B. California’s waiver submission satisfied Section 209, and the Withdrawal Decision’s conclusion otherwise was improper.**

**1. There is no dispute that California needs its vehicle program to meet compelling and extraordinary conditions, so EPA was obligated to grant the waiver.**

Under EPA’s longstanding interpretation of Section 209, EPA need only find that California needs its program as a whole to meet compelling and extraordinary conditions. No party disputes that California’s challenging criteria pollutant conditions remain “compelling and extraordinary.” 78 Fed. Reg. at 2129. So there is no question California needs separate vehicle standards to meet at least those conditions. Indeed, the Withdrawal Decision itself affirmed that California’s criteria pollutant problems satisfied the terms of Section 209 and so declined to withdraw the original waiver as to those standards. *See* 84 Fed. Reg. at 51344, 51346.

Under the traditional interpretation of Section 209, that fact – in the absence of any determination that California failed to meet the first or third waiver prongs – obligated EPA to grant the requested waiver and rendered the Withdrawal Decision invalid. *See* 42 U.S.C. § 7543(b)(1).

**2. Even if EPA were obligated to assess California’s need for its particular greenhouse-gas and zero-emission vehicle standards, California’s waiver request satisfied the second waiver prong.**

Even under the Withdrawal Decision’s legal interpretation, however, California has demonstrated a need for each of the standards in question. The Withdrawal Decision applied not only a requirement that EPA assess California’s need for individual standards, but also a requirement that California demonstrate a “particularized nexus between the emissions from California vehicles, their contribution to local pollution, and the extraordinary impacts that that pollution has on California due to California’s specific characteristics.” 84 Fed. Reg. at 51346. But the Withdrawal Decision misconstrued or ignored record evidence showing both the greenhouse-gas and zero-emission vehicle standards met this test. This rendered the Withdrawal Decision improper even under its own erroneous statutory interpretation and fell short of the requirement that agencies provide a “reasoned explanation” for disregarding “prior factual findings” based on “a ‘searching and careful inquiry’ of the record.” *Nat’l Lifeline Ass’n v. FCC*, 921 F.3d 1102, 1111 (D.C. Cir. 2019).

As EPA explained in its 2009 and 2013 waivers, and again here, California faces compelling and extraordinary conditions as to both greenhouse gases and criteria pollutants, which affect California air quality independently and in combination. California’s criteria pollutant conditions are undisputedly

compelling and extraordinary. But California is also “particularly impacted by climate change.” 87 Fed. Reg. at 14363, 14365. The Withdrawal Decision’s record included information demonstrating that California was “home to some of the country’s hottest and driest areas, which are particularly threatened by record-breaking heatwaves, sustained droughts, and wildfire, as a result of [greenhouse-gas] emissions.” *Id.* at 14338. It also included reports demonstrating that California “faces a particular threat from sea-level rise and ocean acidification” due to climate change because it has “the most valuable ocean-based economy in the country,” *id.* at 14338-39 & n.43, as well as numerous other climate-based risks, *e.g.*, *id.* at 14338 n.37.

The Restoration Decision thus found that the Withdrawal Decision’s own record “demonstrate[d] that California is ‘one of the most climate challenged’ regions of North America.” *Id.* at 14338. Because the magnitude and combination of these risks and harms is “sufficiently different” than conditions in the “Nation as a whole” – and undisputedly compelling – they amount to “compelling and extraordinary conditions” under Section 209. *See* S. Rep. No. 90-403, at 33; H.R. Rep. No. 90-728, at 21.

Petitioners cite the Withdrawal Decision to claim that some of those impacts are being experienced elsewhere. *See* 84 Fed. Reg. at 51348 & n.278; Fuel Br. 33. But neither they nor the Withdrawal Decision present evidence that another state –

or the nation on average – is experiencing a comparable suite of simultaneous harms. And, as noted earlier, California need not be the only state affected by such harms for their impacts to be “beyond what is ordinary.” *Supra* Argument IV.A.2.

In response to commenters, EPA also repeatedly addressed, in the alternative, California’s “need” for its specific greenhouse-gas and zero-emission vehicle standards to address compelling and extraordinary conditions. These standards will “drive reductions in criteria pollution,” 87 Fed. Reg. at 14363-65, and create quantifiable reductions in greenhouse gases, leading to “incremental, directional improvement” in the State’s air pollutant conditions, *id.* at 14365-66.

The same is true even if that need must meet the Withdrawal Decisions’ additional (atextual) “nexus” test: a connection between the pollutants, the pollution, and the impacts, 84 Fed. Reg. at 51340 n.260. *See* 87 Fed. Reg. at 14336. The zero-emission vehicle standard directly reduces criteria pollutant emissions by increasing the share of vehicles that produce no criteria pollutants whatsoever. *Id.* at 14364. California’s vehicle program has included a zero-emission vehicle standard for this reason since 1990, *id.* at 14363, as the Withdrawal Decision acknowledged, 84 Fed. Reg. at 51329. While California’s more recent waiver submissions have relied on the zero-emission vehicle standard to reduce both criteria and greenhouse-gas emissions, since it is undeniably

effective at reducing both, this joint purpose cannot diminish its role as a criteria pollutant measure. *See* 78 Fed. Reg. at 2114, 2130-31.

The Withdrawal Decision did not find any factual change in the historical nature or effectiveness of California's zero-emission vehicle standard, but merely in how California allocated the anticipated reductions between the coordinated elements of its Advanced Clean Cars program. *See* 84 Fed. Reg. at 51330, 51349 n.284. Petitioners thus claim EPA could ignore zero-emission vehicles' effects on criteria pollutants because "California's application did not claim" this standard "would help with local pollution problems." Fuel Br. 50-51. But "how California attributes the pollution reductions for accounting purposes from its various standards does not reflect the reality of how the standards deliver emission reductions." 87 Fed. Reg. at 14364; *see id.* at 14343. California also clarified in comments that its accounting was misconstrued by the Withdrawal Decision. *Id.* at 14364-65 & n.308. Neither the Withdrawal Decision nor Petitioners can reasonably assert that a requirement increasing the use of zero-emission vehicles, which entirely eliminate onroad criteria pollutant emissions, is somehow unrelated to criteria pollutant conditions in California. Thus, neither can reasonably suggest that California's zero-emission vehicle standard failed the second waiver criterion.

In addition, by reducing greenhouse-gas emissions from cars, both the zero-emission vehicle and greenhouse-gas standards reduce upstream criteria emissions

from gas production and oil and gas refineries. 87 Fed. Reg. at 14364. The Withdrawal Decision failed to even mention these localized benefits, despite their appearance in California's waiver request and supplemental comments. *See* 78 Fed. Reg. at 2122; "CARB Supplemental Comments" at 3-4, EPA-HQ-OAR-2012-0562-0373, JA\_\_\_; 84 Fed. Reg. at 51337. Petitioners claim California does not "need" these emission reductions when it could regulate upstream sources directly. Fuel Br. 52. But there is no textual bar on EPA's or California's consideration of upstream benefits from vehicles standards, as EPA has previously explained. 77 Fed. Reg. 62624, 62819 (Oct. 15, 2012); 87 Fed. Reg. at 14363 n.296. Nor can these emission reductions be dismissed as "trivial," Fuel Br. 52, where Section 209(b)(1)(B) does not require any particular quantum of emissions improvement, or any improvement at all, over federal standards. *See supra* Argument IV.A.2.

The interrelationship of greenhouse-gas pollution and smog is also well established. 87 Fed. Reg. at 14353, 14363-64. "[T]here is general consensus that temperature increases from climate change will exacerbate the historic climate, topography, and population factors conducive to smog formation in California." 87 Fed. Reg. at 14364 n.297 (quoting 74 Fed. Reg. at 32763). And measures to reduce greenhouse gases often address smog-forming pollutants like nitrogen oxide as well. *See* 79 Fed. Reg. at 46261 (explaining California's projection in a waiver for heavy-duty vehicles that its greenhouse-gas standards would also reduce

nitrogen oxide by 1-3 tons per day through 2020). Consequently, EPA reasonably concluded more than a decade ago that greenhouse-gas measures are relevant to addressing criteria pollutant concerns. 74 Fed. Reg. at 32763.

Unsurprisingly, the Withdrawal Decision's abolition of California's greenhouse-gas and zero-emission vehicle standards was quantified as increasing emissions of nitrogen oxides by 1.24 tons per day in California's South Coast air basin alone. 87 Fed. Reg. at 14338 & n.41; *see* California Comments on Withdrawal Decision at 287, NHTSA-2018-0067-11873 (attachment 2), JA\_\_\_\_ (noting that California's state plan to attain ozone standards in the basin required passenger-car nitrogen-oxide reductions of approximately six tons per day). This measurable and significant quantity of emission reduction directed at California's compelling and extraordinary criteria pollutant conditions was unreasonably dismissed by the Withdrawal Decision.

EPA also reasonably concluded here that the Withdrawal Decision misjudged California's need for greenhouse-gas standards, even considering only those greenhouse-gas problems with a "local nexus" to California conditions and harms. Despite the Withdrawal Decision's insistence that greenhouse gases have only global-level effects, the record there – and here – "contain[ed] sufficient and unrefuted evidence that there can be locally elevated carbon dioxide concentrations resulting from nearby carbon dioxide emissions," which "can have local impacts

on, for instance, the extent of ocean acidification.” 87 Fed. Reg. at 14365-66.

Neither the Withdrawal Decision, nor Petitioners, addressed – let alone negated – this evidence of a local nexus sufficient to satisfy even their crabbed reading of Section 209(b)(1)(B).

Finally, EPA’s conclusions concerning California’s need for its greenhouse-gas and zero-emission vehicle standards were not undermined by the “deemed-to-comply” provision included in California’s standards. Fuel Br. 43. Petitioners contend that California could not have “needed” its own standards in 2013 because its Advanced Clean Car program regulations allowed compliance with the contemporaneous federal greenhouse-gas standards to be deemed compliance with California’s standards, notwithstanding differences between the two. *Id.* But Section 209(b)(1) allows California to set any standards it wishes so long as those standards “will be, in the aggregate, *at least as* protective ... as applicable Federal standards.” 42 U.S.C. § 7543(b)(1) (emphasis added). By these terms, there is plainly no error where California adopts, or allows for, standards that are simply equal to federal standards, as it did in 2013. *See* 78 Fed. Reg. at 2124, 2129-30.

**C. EPA appropriately rejected the Withdrawal Decision’s reliance on EPCA preemption.**

Section 209(b) provides that the Administrator “shall” issue a waiver of Section 209(a) unless the Administrator finds that one of three specified statutory criteria is met. Congress, therefore, deliberately limited the Administrator’s



decision whether to grant a waiver to California to consideration of these three criteria. *See supra* Argument IV.A.1.

Notwithstanding this clear congressional direction, State Petitioners contend that EPA was required to look outside the statutorily prescribed criteria and deny the waiver due to a distinct statute, EPCA, that they claim preempts California's standards. State Br. 33-41. The States' argument fails because EPA appropriately determined in the Restoration Decision that its waiver determinations should be limited to consideration of the three statutory criteria specified in Section 209(b)(1), and that the Withdrawal Action's reliance on EPCA was in error. In any event, the Withdrawal Decision based its consideration of EPCA on a NHTSA interpretation that has been revoked. EPA's approach is consistent with longstanding Agency practice, the text of Section 209, and applicable case law. This Court should reject the State Petitioners' attempt to expand the scope of the Administrator's waiver consideration under Section 209(b) to matters outside EPA's purview.

**1. Congress constrained EPA waiver determinations to the three criteria listed in Section 209(b).**

As explained above, EPA's role in reviewing waiver applications is highly deferential and limited to reviewing whether any of the three statutory criteria for denial in Section 209(b)(1)(A)-(C) has been met. EPA is thus constrained from "second-guess[ing] the wisdom of state policy" by expanding its waiver

consideration outside of the three enumerated criteria in Section 209(b). 87 Fed. Reg. at 14342.

For the 50 years prior to publication of the Withdrawal Decision, EPA consistently construed the scope of its waiver review as limited to the three statutory criteria. *See, e.g.*, 41 Fed. Reg. 44209, 44210 (Oct. 7, 1976); 49 Fed. Reg. at 18889; 73 Fed. Reg. at 12159; 74 Fed. Reg. at 32783. This Court has repeatedly upheld that interpretation. In *MEMA I*, the petitioners alleged that the Administrator erred in declining to consider statutory, constitutional, and antitrust challenges raised in opposition to a California waiver request, which went beyond the specified statutory criteria. 627 F.2d at 1111. This Court upheld the Administrator's limited scope of waiver review, explaining that "the Administrator operates in a narrowly circumscribed proceeding requiring no broad policy judgments on constitutionally sensitive matters." *Id.* at 1115. The Court explained that "there is no such thing as a 'general duty' on an administrative agency to make decisions based on factors other than those Congress expressly or impliedly intended the agency to consider." *Id.* at 1116. Because Section 209(b) instructs that the Administrator "shall" issue the waiver *unless* one of the three criteria specified by Congress is met, the Administrator does not err in focusing solely on those criteria.

This Court reached the same conclusion in the face of similar challenges in *MEMA II*, explaining that “[S]ection 209(b) sets forth the only waiver standards with which California must comply . . . . If EPA concludes that California’s standards pass this test, it is obligated to approve California’s waiver application.” 142 F.3d at 462-63. In the Restoration Decision, as in *MEMA I* and *II*, the Administrator properly declined to broaden his waiver consideration outside of the criteria specified by Congress.

**2. The Withdrawal Decision does not compel EPA to consider EPCA preemption in this action.**

EPA’s consideration in the Withdrawal Decision of a short-lived NHTSA interpretation on the scope of EPCA’s preemption provision does not change this analysis. *See* State Br. 33-41. First, the Withdrawal Decision claimed it was only looking beyond Section 209(b)’s statutory criteria because it was issued jointly and simultaneously with a NHTSA conclusion that EPCA preempts California’s greenhouse-gas and zero-emission vehicle standards. 84 Fed. Reg. at 51338. But EPA also explained that such a deviation would not be appropriate outside of that context. *Id.*

On December 29, 2021, NHTSA issued a final rule withdrawing its preemption conclusion. 86 Fed. Reg. at 74238. NHTSA concluded that withdrawal of the interpretation was appropriate in part because the previous interpretation’s sweeping, categorical preemption prohibitions were overly broad

and restrictive. *Id.* at 74238-39. As a result, there is no longer any existing NHTSA regulation purporting to define the scope of EPCA preemption. Even if, under the unique context of the Withdrawal Decision, EPA *could have* looked outside the three Section 209(b) statutory criteria and rejected a waiver on the basis of NHTSA's contemporaneous interpretation, there was no longer any basis for doing so at the time of the Restoration Decision. 87 Fed. Reg. at 14371. EPA was no longer acting jointly with NHTSA's purported determination of the California standards' legality, and NHTSA had rescinded the legal interpretation underpinning the Withdrawal Decision. Therefore, even under the logic of the Withdrawal Decision, it would have been improper in the Restoration Decision for EPA to look outside the Section 209(b) criteria.

Nor would it have been appropriate for EPA to adopt its own interpretation of EPCA preemption in the absence of a NHTSA interpretation. NHTSA, not EPA, administers EPCA, and EPA has not been delegated authority to interpret EPCA. *See, e.g., Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1629 (2018) (“[O]n no account might we agree that Congress implicitly delegated to an agency authority to address the meaning of a second statute it does not administer.”). As EPA pointed out, both courts that have considered the scope of EPCA preemption have concluded that EPCA does *not* preempt California's greenhouse-gas emission standards. *See Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F.

Supp. 2d 295 (D. Vt. 2007); *Cent. Valley Chrysler-Jeep v. Goldstene*, 529 F. Supp. 2d 1151 (E.D. Cal. 2007). And as the Supreme Court observed regarding the interplay between the Clean Air Act and EPCA, “[t]he two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.” *Massachusetts*, 549 U.S. at 532. In light of NHTSA’s withdrawal of its prior preemption interpretation, it would have been particularly inappropriate for EPA to independently adopt the expansive view of EPCA preemption that State Petitioners urge. *See* 86 Fed. Reg. at 74239.

Further, an agency has discretion to determine the scope of its own action. *See, e.g., Taylor v. FAA*, 895 F.3d 56, 68 (D.C. Cir. 2018). State Petitioners’ contention that their comments raising EPCA preemption required EPA to rule on its preemptive effect reflects a misunderstanding of the Administrative Procedure Act. State Br. 38-39. The comment process functions to ensure that an agency considers “relevant factors.” *Thompson v. Clark*, 741 F.2d 401, 409 (D.C. Cir. 1984). In the Restoration Decision, EPA satisfied its duties by explaining that EPCA preemption is not a relevant factor under Section 209(b) of the Clean Air Act. 87 Fed. Reg. at 14368-74. And, as described above, this Court has already recognized that the Administrator may properly determine that the Section 209(b) criteria are the only relevant considerations in a waiver determination. *See MEMA*

*I*, 627 F.2d at 1115-16; *MEMA II*, 142 F.3d at 462-63. State Petitioners' disagreement with EPA's conclusion does not render it arbitrary and capricious.

For the reasons described above, in the Restoration Decision, EPA appropriately executed the limited role that Congress designed for review of waiver requests under Section 209(b). Whether EPCA separately preempts the standards whose Section 209(b) waiver EPA granted, and therefore whether California has authority to enforce them, State Br. 33, is a fact-specific question distinct from the Administrator's decision to grant the waiver. The available forum for injured parties to seek review of preemption arguments would be in an action contesting the California standards directly in district court. *See, e.g., Green Mountain*, 508 F. Supp. 2d 295 (plaintiffs raising EPCA preemption challenge to state standards in district court); *Cent. Valley*, 529 F. Supp. 2d 1151 (same). However, if this Court concludes that EPA erred by not considering EPCA preemption, the Court should remand the question to EPA without vacatur for consideration in the first instance. *See I.N.S. v. Ventura*, 537 U.S. 12, 16 (2002).

### CONCLUSION

For the foregoing reasons, the petitions for review should be denied.

Respectfully submitted,

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DATE: January 13, 2023

/s/ Chloe H. Kolman

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify pursuant to Fed. R. App. P. 32(f) and (g) that this brief contains 20,972 words, excluding exempted parts of the brief, according to the count of Microsoft Word, and that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B)(i).

/s/ Chloe H. Kolman

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### **CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Chloe H. Kolman

CHLOE H. KOLMAN



## ORAL ARGUMENT NOT YET SCHEDULED

No. 22-1081 and consolidated cases

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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STATE OF OHIO, et al.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

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On Petitions for Review of Final Action  
by the U.S. Environmental Protection Agency

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**STATUTORY AND REGULATORY ADDENDUM OF RESPONDENTS**

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Proposed Legislation

## United States Code Annotated

## Title 5. Government Organization and Employees (Refs &amp; Annos)

## Part I. The Agencies Generally

## Chapter 7. Judicial Review (Refs &amp; Annos)

## 5 U.S.C.A. § 706

## § 706. Scope of review

## Currentness

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to [sections 556](#) and [557](#) of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

**CREDIT(S)**

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Notes of Decisions (5355)

5 U.S.C.A. § 706, 5 USCA § 706

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated

Title 16. Conservation

Chapter 12. Federal Regulation and Development of Power (Refs & Annos)

Subchapter I. Regulation of the Development of Water Power and Resources (Refs & Annos)

16 U.S.C.A. § 823c

§ 823c. Alaska State jurisdiction over small hydroelectric projects

Effective: August 8, 2005

Currentness

**(a) Discontinuance of regulation by the Commission**

Notwithstanding [sections 797\(e\)](#) and [817](#) of this title, the Commission shall discontinue exercising licensing and regulatory authority under this subchapter over qualifying project works in the State of Alaska, effective on the date on which the Commission certifies that the State of Alaska has in place a regulatory program for water-power development that--

(1) protects the public interest, the purposes listed in paragraph (2), and the environment to the same extent provided by licensing and regulation by the Commission under this subchapter and other applicable Federal laws, including the Endangered Species Act ([16 U.S.C. 1531 et seq.](#)) and the Fish and Wildlife Coordination Act ([16 U.S.C. 661 et seq.](#));

(2) gives equal consideration to the purposes of--

(A) energy conservation;

(B) the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat);

(C) the protection of recreational opportunities;

(D) the preservation of other aspects of environmental quality;

(E) the interests of Alaska Natives; and

(F) other beneficial public uses, including irrigation, flood control, water supply, and navigation; and

(3) requires, as a condition of a license for any project works--

(A) the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate;

(B) the operation of any navigation facilities which may be constructed as part of any project to be controlled at all times by such reasonable rules and regulations as may be made by the Secretary of the Army; and

(C) except as provided in subsection (j), conditions for the protection, mitigation, and enhancement of fish and wildlife based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

**(b) Definition of “qualifying project works”**

For purposes of this section, the term “qualifying project works” means project works--

(1) that are not part of a project licensed under this part or exempted from licensing under this subchapter or [section 2705](#) of this title prior to November 9, 2000;

(2) for which a preliminary permit, a license application, or an application for an exemption from licensing has not been accepted for filing by the Commission prior to November 9, 2000 (unless such application is withdrawn at the election of the applicant);

(3) that are part of a project that has a power production capacity of 5,000 kilowatts or less;

(4) that are located entirely within the boundaries of the State of Alaska; and

(5) that are not located in whole or in part on any Indian reservation, a conservation system unit (as defined in [section 3102\(4\)](#) of this title), or segment of a river designated for study for addition to the Wild and Scenic Rivers System.

**(c) Election of State licensing**

In the case of nonqualifying project works that would be a qualifying project works but for the fact that the project has been licensed (or exempted from licensing) by the Commission prior to November 9, 2000, the licensee of such project may in its discretion elect to make the project subject to licensing and regulation by the State of Alaska under this section.

**(d) Project works on Federal lands**

With respect to projects located in whole or in part on a reservation, a conservation system unit, or the public lands, a State license or exemption from licensing shall be subject to--

(1) the approval of the Secretary having jurisdiction over such lands; and

(2) such conditions as the Secretary may prescribe.

**(e) Consultation with affected agencies**

The Commission shall consult with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce before certifying the State of Alaska's regulatory program.

**(f) Application of Federal laws**

Nothing in this section shall preempt the application of Federal environmental, natural resources, or cultural resources protection laws according to their terms.

**(g) Oversight by the Commission**

The State of Alaska shall notify the Commission not later than 30 days after making any significant modification to its regulatory program. The Commission shall periodically review the State's program to ensure compliance with the provisions of this section.

**(h) Resumption of Commission authority**

Notwithstanding subsection (a), the Commission shall reassert its licensing and regulatory authority under this subchapter if the Commission finds that the State of Alaska has not complied with one or more of the requirements of this section.

**(i) Determination by the Commission**

(1) Upon application by the Governor of the State of Alaska, the Commission shall within 30 days commence a review of the State of Alaska's regulatory program for water-power development to determine whether it complies with the requirements of subsection (a).

(2) The Commission's review required by paragraph (1) shall be completed within 1 year of initiation, and the Commission shall within 30 days thereafter issue a final order determining whether or not the State of Alaska's regulatory program for water-power development complies with the requirements of subsection (a).

(3) If the Commission fails to issue a final order in accordance with paragraph (2) the State of Alaska's regulatory program for water-power development shall be deemed to be in compliance with subsection (a).

**(j) Fish and wildlife**

If the State of Alaska determines that a recommendation under subsection (a)(3)(C) is inconsistent with paragraphs (1) and (2) of subsection (a), the State of Alaska may decline to adopt all or part of the recommendations in accordance with the procedures established under [section 803\(j\)\(2\)](#) of this title.



**CREDIT(S)**

(June 10, 1920, c. 285, pt. I, § 32, as added [Pub.L. 106-469, Title V, § 501](#), Nov. 9, 2000, 114 Stat. 2037; amended [Pub.L. 109-58, Title II, § 244](#), Aug. 8, 2005, 119 Stat. 678.)

16 U.S.C.A. § 823c, 16 USCA § 823c

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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Proposed Legislation

## United States Code Annotated

## Title 16. Conservation

## Chapter 12. Federal Regulation and Development of Power (Refs &amp; Annos)

## Subchapter II. Regulation of Electric Utility Companies Engaged in Interstate Commerce

## 16 U.S.C.A. § 824k

## § 824k. Orders requiring interconnection or wheeling

## Currentness

**(a) Rates, charges, terms, and conditions for wholesale transmission services**

An order under [section 824j](#) of this title shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided pursuant to an order under [section 824j](#) of this title shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.

**(b) Repealed. Pub.L. 102-486, Title VII, § 722(1), Oct. 24, 1992, 106 Stat. 2916****(c) Issuance of proposed order; agreement by parties to terms and conditions of order; approval by Commission; inclusion in final order; failure to agree**

(1) Before issuing an order under [section 824i](#) of this title or [subsection \(a\)](#) or [\(b\) of section 824j](#) of this title, the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. Such proposed order shall not be reviewable or enforceable in any court. The time set for such parties to agree to such terms and conditions may be shortened if the Commission determines that delay would jeopardize the attainment of the purposes of any proposed order. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission.

(2)(A) If the parties agree as provided in paragraph (1) within the time set by the Commission and the Commission approves such agreement, the terms and conditions shall be included in the final order. In the case of an order under [section 824i](#) of this title, if the parties fail to agree within the time set by the Commission or if the Commission does not approve any such agreement, the Commission shall prescribe such terms and conditions and include such terms and conditions in the final order.

(B) In the case of any order applied for under [section 824j](#) of this title, if the parties fail to agree within the time set by the Commission, the Commission shall prescribe such terms and conditions in the final order.

**(d) Statement of reasons for denial**

If the Commission does not issue any order applied for under [section 824i](#) or [824j](#) of this title, the Commission shall, by order, deny such application and state the reasons for such denial.

**(e) Savings provisions**

(1) No provision of [section 824i](#), [824j](#), [824m](#) of this title, or this section shall be treated as requiring any person to utilize the authority of any such section in lieu of any other authority of law. Except as provided in [section 824i](#), [824j](#), [824m](#) of this title, or this section, such sections shall not be construed as limiting or impairing any authority of the Commission under any other provision of law.

(2) [Sections 824i](#), [824j](#), [824l](#), [824m](#) of this title, and this section, shall not be construed to modify, impair, or supersede the antitrust laws. For purposes of this section, the term “antitrust laws” has the meaning given in subsection (a) of the first sentence of [section 12 of Title 15](#), except that such term includes [section 45 of Title 15](#) to the extent that such section relates to unfair methods of competition.

**(f) Effective date of order; hearing; notice; review**

(1) No order under [section 824i](#) or [824j](#) of this title requiring the Tennessee Valley Authority (hereinafter in this subsection referred to as the “TVA”) to take any action shall take effect for 60 days following the date of issuance of the order. Within 60 days following the issuance by the Commission of any order under [section 824i](#) or of [section 824j](#) of this title requiring the TVA to enter into any contract for the sale or delivery of power, the Commission may on its own motion initiate, or upon petition of any aggrieved person shall initiate, an evidentiary hearing to determine whether or not such sale or delivery would result in violation of the third sentence of section 15d(a) of the Tennessee Valley Authority Act of 1933 ([16 U.S.C. 831n-4](#)), hereinafter in this subsection referred to as the TVA Act.

(2) Upon initiation of any evidentiary hearing under paragraph (1), the Commission shall give notice thereof to any applicant who applied for and obtained the order from the Commission, to any electric utility or other entity subject to such order, and to the public, and shall promptly make the determination referred to in paragraph (1). Upon initiation of such hearing, the Commission shall stay the effectiveness of the order under [section 824i](#) or [824j](#) of this title until whichever of the following dates is applicable--

(A) the date on which there is a final determination (including any judicial review thereof under paragraph (3)) that no such violation would result from such order, or

(B) the date on which a specific authorization of the Congress (within the meaning of the third sentence of section 15d(a) of the TVA Act) takes effect.

(3) Any determination under paragraph (1) shall be reviewable only in the appropriate court of the United States upon petition filed by any aggrieved person or municipality within 60 days after such determination, and such court shall have jurisdiction to grant appropriate relief. Any applicant who applied for and obtained the order under [section 824i](#) or [824j](#) of this title, and any electric utility or other entity subject to such order shall have the right to intervene in any such proceeding in such court. Except for review by such court (and any appeal or other review by an appellate court of the United States), no court shall have jurisdiction to consider any action brought by any person to enjoin the carrying out of any order of the Commission under [section 824i](#) or [section 824j](#) of this title requiring the TVA to take any action on the grounds that such action requires a specific authorization of the Congress pursuant to the third sentence of section 15d(a) of the TVA Act.

**(g) Prohibition on orders inconsistent with retail marketing areas**

No order may be issued under this chapter which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

**(h) Prohibition on mandatory retail wheeling and sham wholesale transactions**

No order issued under this chapter shall be conditioned upon or require the transmission of electric energy:

(1) directly to an ultimate consumer, or

(2) to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer, unless:

(A) such entity is a Federal power marketing agency; the Tennessee Valley Authority; a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision); a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and

(B) such entity was providing electric service to such ultimate consumer on October 24, 1992, or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer.

**(i) Laws applicable to Federal Columbia River Transmission System**

(1) The Commission shall have authority pursuant to [section 824i](#) of this title, [section 824j](#) of this title, this section, and [section 824l](#) of this title to (A) order the Administrator of the Bonneville Power Administration to provide transmission service and

(B) establish the terms and conditions of such service. In applying such sections to the Federal Columbia River Transmission System, the Commission shall assure that--

(i) the provisions of otherwise applicable Federal laws shall continue in full force and effect and shall continue to be applicable to the system; and

(ii) the rates for the transmission of electric power on the system shall be governed only by such otherwise applicable provisions of law and not by any provision of [section 824i](#) of this title, [section 824j](#) of this title, this section, or [section 824l](#) of this title, except that no rate for the transmission of power on the system shall be unjust, unreasonable, or unduly discriminatory or preferential, as determined by the Commission.

(2) Notwithstanding any other provision of this chapter with respect to the procedures for the determination of terms and conditions for transmission service--

(A) when the Administrator of the Bonneville Power Administration either (i) in response to a written request for specific transmission service terms and conditions does not offer the requested terms and conditions, or (ii) proposes to establish terms and conditions of general applicability for transmission service on the Federal Columbia River Transmission System, then the Administrator may provide opportunity for a hearing and, in so doing, shall--

(I) give notice in the Federal Register and state in such notice the written explanation of the reasons why the specific terms and conditions for transmission services are not being offered or are being proposed;

(II) adhere to the procedural requirements of [paragraphs \(1\) through \(3\) of section 839e\(i\)](#) of this title, except that the hearing officer shall, unless the hearing officer becomes unavailable to the agency, make a recommended decision to the Administrator that states the hearing officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record; and

(III) make a determination, setting forth the reasons for reaching any findings and conclusions which may differ from those of the hearing officer, based on the hearing record, consideration of the hearing officer's recommended decision, [section 824j](#) of this title and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section; and

(B) if application is made to the Commission under [section 824j](#) of this title for transmission service under terms and conditions different than those offered by the Administrator, or following the denial of a request for transmission service by the Administrator, and such application is filed within 60 days of the Administrator's final determination and in accordance with Commission procedures, the Commission shall--

(i) in the event the Administrator has conducted a hearing as herein provided for (I) accord parties to the Administrator's hearing the opportunity to offer for the Commission record materials excluded by the Administrator from the hearing record, (II) accord such parties the opportunity to submit for the Commission record comments on appropriate terms and conditions, (III) afford those parties the opportunity for a hearing if and to the extent that the Commission finds the Administrator's hearing record to be inadequate to support a decision by the Commission, and (IV) establish terms and conditions for or deny transmission service based on the Administrator's hearing record, the Commission record, [section](#)

824j of this title and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section, or

(ii) in the event the Administrator has not conducted a hearing as herein provided for, determine whether to issue an order for transmission service in accordance with section 824j of this title and this section, including providing the opportunity for a hearing.

(3) Notwithstanding those provisions of section 825(b) of this title which designate the court in which review may be obtained, any party to a proceeding concerning transmission service sought to be furnished by the Administrator of the Bonneville Power Administration seeking review of an order issued by the Commission in such proceeding shall obtain a review of such order in the United States Court of Appeals for the Pacific Northwest, as that region is defined by section 839a(14) of this title.

(4) To the extent the Administrator of the Bonneville Power Administration cannot be required under section 824j of this title, as a result of the Administrator's other statutory mandates, either to (A) provide transmission service to an applicant which the Commission would otherwise order, or (B) provide such service under rates, terms, and conditions which the Commission would otherwise require, the applicant shall not be required to provide similar transmission services to the Administrator or to provide such services under similar rates, terms, and conditions.

(5) The Commission shall not issue any order under section 824i of this title, section 824j of this title, this section, or section 824/ of this title requiring the Administrator of the Bonneville Power Administration to provide transmission service if such an order would impair the Administrator's ability to provide such transmission service to the Administrator's power and transmission customers in the Pacific Northwest, as that region is defined in section 839a(14) of this title, as is needed to assure adequate and reliable service to loads in that region.

#### **(j) Equitability within territory restricted electric systems**

With respect to an electric utility which is prohibited by Federal law from being a source of power supply, either directly or through a distributor of its electric energy, outside an area set forth in such law, no order issued under section 824j of this title may require such electric utility (or a distributor of such electric utility) to provide transmission services to another entity if the electric energy to be transmitted will be consumed within the area set forth in such Federal law, unless the order is in furtherance of a sale of electric energy to that electric utility: Provided, however, That the foregoing provision shall not apply to any area served at retail by an electric transmission system which was such a distributor on October 24, 1992, and which before October 1, 1991, gave its notice of termination under its power supply contract with such electric utility.

#### **(k) ERCOT utilities**

##### **(1) Rates**

Any order under section 824j of this title requiring provision of transmission services in whole or in part within ERCOT shall provide that any ERCOT utility which is not a public utility and the transmission facilities of which are actually used for such transmission service is entitled to receive compensation based, insofar as practicable and consistent with subsection (a), on the transmission ratemaking methodology used by the Public Utility Commission of Texas.

## **(2) Definitions**

For purposes of this subsection--

(A) the term “ERCOT” means the Electric Reliability Council of Texas; and

(B) the term “ERCOT utility” means a transmitting utility which is a member of ERCOT.

## **CREDIT(S)**

(June 10, 1920, c. 285, pt. II, § 212, as added [Pub.L. 95-617, Title II, § 204\(a\)](#), Nov. 9, 1978, 92 Stat. 3138; amended [Pub.L. 102-486, Title VII, § 722](#), Oct. 24, 1992, 106 Stat. 2916.)

## **Notes of Decisions (4)**

16 U.S.C.A. § 824k, 16 USCA § 824k

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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Proposed Legislation

United States Code Annotated

Title 16. Conservation

Chapter 12. Federal Regulation and Development of Power (Refs & Annos)

Subchapter II. Regulation of Electric Utility Companies Engaged in Interstate Commerce

16 U.S.C.A. § 824p

§ 824p. Siting of interstate electric transmission facilities

Effective: November 15, 2021

[Currentness](#)

**(a) Designation of national interest electric transmission corridors**

(1) Not later than 1 year after August 8, 2005, and every 3 years thereafter, the Secretary of Energy (referred to in this section as the “Secretary”), in consultation with affected States and Indian Tribes, shall conduct a study of electric transmission capacity constraints and congestion.

(2) Not less frequently than once every 3 years, the Secretary, after considering alternatives and recommendations from interested parties (including an opportunity for comment from affected States and Indian Tribes), shall issue a report, based on the study under paragraph (1) or other information relating to electric transmission capacity constraints and congestion, which may designate as a national interest electric transmission corridor any geographic area that--

(i) <sup>1</sup> is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or

(ii) <sup>2</sup> is expected to experience such energy transmission capacity constraints or congestion.

(3) Not less frequently than once every 3 years, the Secretary, in conducting the study under paragraph (1) and issuing the report under paragraph (2), shall consult with any appropriate regional entity referred to in [section 824o](#) of this title.

(4) In determining whether to designate a national interest electric transmission corridor under paragraph (2), the Secretary may consider whether--

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and



(ii) a diversification of supply is warranted;

(C) the energy independence or energy security of the United States would be served by the designation;

(D) the designation would be in the interest of national energy policy;

(E) the designation would enhance national defense and homeland security;

(F) the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid;

(G) the designation--

(i) maximizes existing rights-of-way; and

(ii) avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites; and

(H) the designation would result in a reduction in the cost to purchase electric energy for consumers.

**(b) Construction permit**

Except as provided in subsection (i), the Commission may, after notice and an opportunity for hearing, issue one or more permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary under subsection (a) if the Commission finds that--

(1)(A) a State in which the transmission facilities are to be constructed or modified does not have authority to--

(i) approve the siting of the facilities; or

(ii) consider the interstate benefits or interregional benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

(B) the applicant for a permit is a transmitting utility under this chapter but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; or

(C) a State commission or other entity that has authority to approve the siting of the facilities--

(i) has not made a determination on an application seeking approval pursuant to applicable law by the date that is 1 year after the later of--

(I) the date on which the application was filed; and

(II) the date on which the relevant national interest electric transmission corridor was designated by the Secretary under subsection (a);

(ii) has conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible; or

(iii) has denied an application seeking approval pursuant to applicable law;

(2) the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce;

(3) the proposed construction or modification is consistent with the public interest;

(4) the proposed construction or modification will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;

(5) the proposed construction or modification is consistent with sound national energy policy and will enhance energy independence; and

(6) the proposed modification will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

#### (c) Permit applications

(1) Permit applications under subsection (b) shall be made in writing to the Commission.

(2) The Commission shall issue rules specifying--

(A) the form of the application;

(B) the information to be contained in the application; and

(C) the manner of service of notice of the permit application on interested persons.

**(d) Comments**

In any proceeding before the Commission under subsection (b), the Commission shall afford each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

**(e) Rights-of-way**

(1) In the case of a permit under subsection (b) for electric transmission facilities to be located on property other than property owned by the United States or a State, if the permit holder cannot acquire by contract, or is unable to agree with the owner of the property to the compensation to be paid for, the necessary right-of-way to construct or modify, and operate and maintain, the transmission facilities and, in the determination of the Commission, the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process, the permit holder may acquire the right-of-way by the exercise of the right of eminent domain in the district court of the United States for the district in which the property concerned is located, or in the appropriate court of the State in which the property is located.

(2) Any right-of-way acquired under paragraph (1) shall be used exclusively for the construction or modification of electric transmission facilities within a reasonable period of time after the acquisition.

(3) The practice and procedure in any action or proceeding under this subsection in the district court of the United States shall conform as nearly as practicable to the practice and procedure in a similar action or proceeding in the courts of the State in which the property is located.

(4) Nothing in this subsection shall be construed to authorize the use of eminent domain to acquire a right-of-way for any purpose other than the construction, modification, operation, or maintenance of electric transmission facilities and related facilities. The right-of-way cannot be used for any other purpose, and the right-of-way shall terminate upon the termination of the use for which the right-of-way was acquired.

**(f) Compensation**

(1) Any right-of-way acquired pursuant to subsection (e) shall be considered a taking of private property for which just compensation is due.

(2) Just compensation shall be an amount equal to the fair market value (including applicable severance damages) of the property taken on the date of the exercise of eminent domain authority.

**(g) State law**

Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.

**(h) Coordination of Federal authorizations for transmission facilities**

**(1)** In this subsection:

**(A)** The term “Federal authorization” means any authorization required under Federal law in order to site a transmission facility.

**(B)** The term “Federal authorization” includes such permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law in order to site a transmission facility.

**(2)** The Department of Energy shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility.

**(3)** To the maximum extent practicable under applicable Federal law, the Secretary shall coordinate the Federal authorization and review process under this subsection with any Indian tribes, multistate entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.

**(4)(A)** As head of the lead agency, the Secretary, in consultation with agencies responsible for Federal authorizations and, as appropriate, with Indian tribes, multistate entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews, shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility.

**(B)** The Secretary shall ensure that, once an application has been submitted with such data as the Secretary considers necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed--

**(i)** within 1 year; or

**(ii)** if a requirement of another provision of Federal law does not permit compliance with clause (i), as soon thereafter as is practicable.

**(C)** The Secretary shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant not later than 60 days after the prospective applicant submits a request for such information concerning--

**(i)** the likelihood of approval for a potential facility; and

**(ii)** key issues of concern to the agencies and public.

**(5)(A)** As lead agency head, the Secretary, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law.

**(B)** The Secretary and the heads of other agencies shall streamline the review and permitting of transmission within corridors designated under section 503 of the Federal Land Policy and Management Act<sup>3</sup> (43 U.S.C. 1763) by fully taking into account prior analyses and decisions relating to the corridors.

**(C)** The document shall include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable law.

**(6)(A)** If any agency has denied a Federal authorization required for a transmission facility, or has failed to act by the deadline established by the Secretary pursuant to this section for deciding whether to issue the authorization, the applicant or any State in which the facility would be located may file an appeal with the President, who shall, in consultation with the affected agency, review the denial or failure to take action on the pending application.

**(B)** Based on the overall record and in consultation with the affected agency, the President may--

**(i)** issue the necessary authorization with any appropriate conditions; or

**(ii)** deny the application.

**(C)** The President shall issue a decision not later than 90 days after the date of the filing of the appeal.

**(D)** In making a decision under this paragraph, the President shall comply with applicable requirements of Federal law, including any requirements of--

**(i)** the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.);

**(ii)** the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

**(iii)** the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

**(iv)** the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

**(v)** the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(7)(A) Not later than 18 months after August 8, 2005, the Secretary shall issue any regulations necessary to implement this subsection.

(B)(i) Not later than 1 year after August 8, 2005, the Secretary and the heads of all Federal agencies with authority to issue Federal authorizations shall enter into a memorandum of understanding to ensure the timely and coordinated review and permitting of electricity transmission facilities.

(ii) Interested Indian tribes, multistate entities, and State agencies may enter the memorandum of understanding.

(C) The head of each Federal agency with authority to issue a Federal authorization shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the regulations and memorandum required under this paragraph.

(8)(A) Each Federal land use authorization for an electricity transmission facility shall be issued--

(i) for a duration, as determined by the Secretary, commensurate with the anticipated use of the facility; and

(ii) with appropriate authority to manage the right-of-way for reliability and environmental protection.

(B) On the expiration of the authorization (including an authorization issued before August 8, 2005), the authorization shall be reviewed for renewal taking fully into account reliance on such electricity infrastructure, recognizing the importance of the authorization for public health, safety, and economic welfare and as a legitimate use of Federal land.

(9) In exercising the responsibilities under this section, the Secretary shall consult regularly with--

(A) the Federal Energy Regulatory Commission;

(B) electric reliability organizations (including related regional entities) approved by the Commission; and

(C) Transmission Organizations approved by the Commission.

**(i) Interstate compacts**

(1) The consent of Congress is given for three or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to--

(A) facilitate siting of future electric energy transmission facilities within those States; and

(B) carry out the electric energy transmission siting responsibilities of those States.

(2) The Secretary shall provide technical assistance to regional transmission siting agencies established under this subsection.

(3) The regional transmission siting agencies shall have the authority to review, certify, and permit siting of transmission facilities, including facilities in national interest electric transmission corridors (other than facilities on property owned by the United States).

(4) The Commission shall have no authority to issue a permit for the construction or modification of an electric transmission facility within a State that is a party to a compact, unless the Secretary determines that the members of the compact are in disagreement after the later of--

(A) the date that is 1 year after the date on which the relevant application for the facility was filed; and

(B) the date that is 1 year after the date on which the relevant national interest electric transmission corridor was designated by the Secretary under subsection (a).

#### (j) Relationship to other laws

(1) Except as specifically provided, nothing in this section affects any requirement of an environmental law of the United States, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Subsection (h)(6) shall not apply to any unit of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or a National Monument.

#### (k) ERCOT

This section shall not apply within the area referred to in section 824k(k)(2)(A) of this title.

#### CREDIT(S)

(June 10, 1920, c. 285, pt. II, § 216, as added Pub.L. 109-58, Title XII, § 1221(a), Aug. 8, 2005, 119 Stat. 946; amended Pub.L. 117-58, Div. D, Title I, § 40105, Nov. 15, 2021, 135 Stat. 933.)

Notes of Decisions (11)

### Footnotes

- 1 So in original. Probably should be “(A)”.
- 2 So in original. Probably should be “(B)”.
- 3 So in original. Probably should be followed by “of 1976”.

16 U.S.C.A. § 824p, 16 USCA § 824p

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated

Title 16. Conservation

Chapter 12. Federal Regulation and Development of Power (Refs & Annos)

Subchapter II. Regulation of Electric Utility Companies Engaged in Interstate Commerce

16 U.S.C.A. § 824q

§ 824q. Native load service obligation

Effective: August 8, 2005

[Currentness](#)

**(a) Definitions**

In this section:

- (1) The term “distribution utility” means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through one or more additional State utilities or electric cooperatives, provides electric service to end-users.
- (2) The term “load-serving entity” means a distribution utility or an electric utility that has a service obligation.
- (3) The term “service obligation” means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.
- (4) The term “State utility” means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.

**(b) Meeting service obligations**

(1) Paragraph (2) applies to any load-serving entity that, as of August 8, 2005--

- (A) owns generation facilities, markets the output of Federal generation facilities, or holds rights under one or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation; and
- (B) by reason of ownership of transmission facilities, or one or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of the generation facilities or the purchased energy to meet the service obligation.

(2) Any load-serving entity described in paragraph (1) is entitled to use the firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver the output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using the rights, to the extent required to meet the service obligation of the load-serving entity.

(3)(A) To the extent that all or a portion of the service obligation covered by the firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation.

(B) Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

(4) The Commission shall exercise the authority of the Commission under this chapter in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.

**(c) Allocation of transmission rights**

Nothing in subsections (b)(1), (b)(2), and (b)(3) of this section shall affect any existing or future methodology employed by a Transmission Organization for allocating or auctioning transmission rights if such Transmission Organization was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation or auction is just, reasonable and not unduly discriminatory or preferential, provided, however, that if such a Transmission Organization never allocated financial transmission rights on its system that pertained to a period before January 1, 2005, with respect to any application by such Transmission Organization that would change its methodology the Commission shall exercise its authority in a manner consistent with the <sup>1</sup> chapter and that takes into account the policies expressed in subsections (b)(1), (b)(2), and (b)(3) as applied to firm transmission rights held by a load-serving entity as of January 1, 2005, to the extent the associated generation ownership or power purchase arrangements remain in effect.

**(d) Certain transmission rights**

The Commission may exercise authority under this chapter to make transmission rights not used to meet an obligation covered by subsection (b) available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

**(e) Obligation to build**

Nothing in this chapter relieves a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet the service obligations of the load-serving entity.

**(f) Contracts**

Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of August 8, 2005. If an ISO in the Western Interconnection had allocated financial transmission rights prior to August 8, 2005, but had not done so with respect to one or more load-serving entities' firm transmission rights held under contracts to which the preceding sentence applies (or held by reason of ownership or future ownership of transmission facilities), such load-serving entities may not be required, without their consent, to convert such firm transmission rights to tradable or financial rights, except where the load-serving entity has voluntarily joined the ISO as a participating transmission owner (or its successor) in accordance with the ISO tariff.

**(g) Water pumping facilities**

The Commission shall ensure that any entity described in [section 824\(f\)](#) of this title that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

**(h) ERCOT**

This section shall not apply within the area referred to in [section 824k\(k\)\(2\)\(A\)](#) of this title.

**(i) Jurisdiction**

This section does not authorize the Commission to take any action not otherwise within the jurisdiction of the Commission.

**(j) TVA area**

(1) Subject to paragraphs (2) and (3), for purposes of subsection (b)(1)(B), a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be considered to hold firm transmission rights for the transmission of the power provided.

(2) Nothing in this subsection affects the requirements of [section 824k\(j\)](#) of this title.

(3) The Commission shall not issue an order on the basis of this subsection that is contrary to the purposes of [section 824k\(j\)](#) of this title.

**(k) Effect of exercising rights**

An entity that to the extent required to meet its service obligations exercises rights described in subsection (b) shall not be considered by such action as engaging in undue discrimination or preference under this chapter.

**CREDIT(S)**

(June 10, 1920, c. 285, pt. II, § 217, as added [Pub.L. 109-58, Title XII, § 1233\(a\)](#), Aug. 8, 2005, 119 Stat. 957.)

Notes of Decisions (1)

### Footnotes

1 So in original. Probably should read “this”.

16 U.S.C.A. § 824q, 16 USCA § 824q

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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## United States Code Annotated

## Title 16. Conservation

## Chapter 12. Federal Regulation and Development of Power (Refs &amp; Annos)

## Subchapter II. Regulation of Electric Utility Companies Engaged in Interstate Commerce

## 16 U.S.C.A. § 824t

## § 824t. Electricity market transparency rules

Effective: August 8, 2005

Currentness

**(a) In general**

(1) The Commission is directed to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.

(2) The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of wholesale electric energy and transmission service to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.

(3) The Commission may--

(A) obtain the information described in paragraph (2) from any market participant; and

(B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b).

(4) In carrying out this section, the Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services, and shall rely on such publishers and services to the maximum extent possible. The Commission may establish an electronic information system if it determines that existing price publications are not adequately providing price discovery or market transparency. Nothing in this section, however, shall affect any electronic information filing requirements in effect under this chapter as of August 8, 2005.

**(b) Exemption of information from disclosure**

(1) Rules described in subsection (a)(2), if adopted, shall exempt from disclosure information the Commission determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

(2) In determining the information to be made available under this section and time to make the information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

**(c) Information sharing**

(1) Within 180 days of August 8, 2005, the Commission shall conclude a memorandum of understanding with the Commodity Futures Trading Commission relating to information sharing, which shall include, among other things, provisions ensuring that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests, and provisions regarding the treatment of proprietary trading information.

(2) Nothing in this section may be construed to limit or affect the exclusive jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act ([7 U.S.C. 1 et seq.](#)).

**(d) Exemption from reporting requirements**

The Commission shall not require entities who have a de minimis market presence to comply with the reporting requirements of this section.

**(e) Penalties for violations occurring before notice**

(1) Except as provided in paragraph (2), no person shall be subject to any civil penalty under this section with respect to any violation occurring more than 3 years before the date on which the person is provided notice of the proposed penalty under [section 825o-1](#) of this title.

(2) Paragraph (1) shall not apply in any case in which the Commission finds that a seller that has entered into a contract for the sale of electric energy at wholesale or transmission service subject to the jurisdiction of the Commission has engaged in fraudulent market manipulation activities materially affecting the contract in violation of [section 824v](#) of this title.

**(f) ERCOT utilities**

This section shall not apply to a transaction for the purchase or sale of wholesale electric energy or transmission services within the area described in [section 824k\(k\)\(2\)\(A\)](#) of this title.

**CREDIT(S)**

(June 10, 1920, c. 285, pt. II, § 220, as added [Pub.L. 109-58, Title XII, § 1281](#), Aug. 8, 2005, 119 Stat. 978.)

16 U.S.C.A. § 824t, 16 USCA § 824t

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated

Title 29. Labor

Chapter 18. Employee Retirement Income Security Program (Refs & Annos)

Subchapter I. Protection of Employee Benefit Rights (Refs & Annos)

Subtitle B. Regulatory Provisions

Part 5. Administration and Enforcement

29 U.S.C.A. § 1144

§ 1144. Other laws

Effective: August 17, 2006

[Currentness](#)

**(a) Supersedure; effective date**

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in [section 1003\(a\)](#) of this title and not exempt under [section 1003\(b\)](#) of this title. This section shall take effect on January 1, 1975.

**(b) Construction and application**

**(1)** This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

**(2)(A)** Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

**(B)** Neither an employee benefit plan described in [section 1003\(a\)](#) of this title, which is not exempt under [section 1003\(b\)](#) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

**(3)** Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under [section 1136](#) of this title.

**(4)** Subsection (a) shall not apply to any generally applicable criminal law of a State.

**(5)(A)** Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act ([Haw.Rev.Stat. §§ 393-1 through 393-51](#)).



**(B)** Nothing in subparagraph (A) shall be construed to exempt from subsection (a)--

**(i)** any State tax law relating to employee benefit plans, or

**(ii)** any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

**(C)** Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after January 14, 1983), but the Secretary may enter into cooperative arrangements under this paragraph and [section 1136](#) of this title with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.

**(6)(A)** Notwithstanding any other provision of this section--

**(i)** in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides--

**(I)** standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

**(II)** provisions to enforce such standards, and

**(ii)** in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this subchapter, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this subchapter.

**(B)** The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of [section 1002\(1\)](#) and [section 1003](#) of this title necessary to be considered an employee welfare benefit plan to which this subchapter applies.

**(C)** Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this subchapter apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of [section 1056\(d\)\(3\)\(B\)\(i\)](#) of this title), qualified medical child support orders (within the meaning of [section 1169\(a\)\(2\)\(A\)](#) of this title), and the provisions of law referred to in [section 1169\(a\)\(2\)\(B\)\(ii\)](#) of this title to the extent they apply to qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action--

(A) with respect to which the State exercises its acquired rights under [section 1169\(b\)\(3\)](#) of this title with respect to a group health plan (as defined in [section 1167\(1\)](#) of this title), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.

(9) For additional provisions relating to group health plans, see [section 1191](#) of this title.

#### (c) Definitions

For purposes of this section:

(1) The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term “State” includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

#### (d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in [sections 1031](#) and [1137\(b\)](#) of this title) or any rule or regulation issued under any such law.

#### (e) Automatic contribution arrangements

(1) Notwithstanding any other provision of this section, this subchapter shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe

regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

(2) For purposes of this subsection, the term “automatic contribution arrangement” means an arrangement--

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) under which such contributions are invested in accordance with regulations prescribed by the Secretary under [section 1104\(c\)\(5\)](#) of this title.

(3)(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which--

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless--

(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

#### CREDIT(S)

(Pub.L. 93-406, Title I, § 514, Sept. 2, 1974, 88 Stat. 897; Pub.L. 97-473, Title III, §§ 301(a), 302(b), Jan. 14, 1983, 96 Stat. 2611, 2613; Pub.L. 98-397, Title I, § 104(b), Aug. 23, 1984, 98 Stat. 1436; Pub.L. 99-272, Title IX, § 9503(d)(1), Apr. 7, 1986, 100 Stat. 207; Pub.L. 101-239, Title VII, § 7894(f)(2)(A), (3)(A), Dec. 19, 1989, 103 Stat. 2450, 2451; Pub.L. 103-66, Title IV, § 4301(c)(4), Aug. 10, 1993, 107 Stat. 377; Pub.L. 104-191, Title I, § 101(f)(1), Aug. 21, 1996, 110 Stat. 1953; Pub.L. 104-204,

Title VI, § 603(b)(3)(G), Sept. 26, 1996, 110 Stat. 2938; Pub.L. 105-200, Title IV, § 401(h)(2)(A)(i), (ii), July 16, 1998, 112 Stat. 668; Pub.L. 109-280, Title IX, § 902(f)(1), Aug. 17, 2006, 120 Stat. 1039.)

29 U.S.C.A. § 1144, 29 USCA § 1144

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 77. Energy Conservation (Refs &amp; Annos)

## Subchapter III. Improving Energy Efficiency

## Part A. Energy Conservation Program for Consumer Products Other than Automobiles (Refs &amp; Annos)

## 42 U.S.C.A. § 6297

## § 6297. Effect on other law

## Currentness

**(a) Preemption of testing and labeling requirements**

(1) Effective on March 17, 1987, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption or water use of any covered product if--

(A) such State regulation requires testing or the use of any measure of energy consumption, water use, or energy descriptor in any manner other than that provided under [section 6293](#) of this title; or

(B) such State regulation requires disclosure of information with respect to the energy use, energy efficiency, or water use of any covered product other than information required under [section 6294](#) of this title.

(2) For purposes of this section, the following definitions apply:

(A) The term “State regulation” means a law, regulation, or other requirement of a State or its political subdivisions. With respect to showerheads, faucets, water closets, and urinals, such term shall also mean a law, regulation, or other requirement of a river basin commission that has jurisdiction within a State.

(B) The term “river basin commission” means--

(i) a commission established by interstate compact to apportion, store, regulate, or otherwise manage or coordinate the management of the waters of a river basin; and

(ii) a commission established under [section 1962b\(a\)](#) of this title.

**(b) General rule of preemption for energy conservation standards before Federal standard becomes effective for product**

Effective on March 17, 1987, and ending on the effective date of an energy conservation standard established under [section 6295](#) of this title for any covered product, no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision--

**(1)(A)** was prescribed or enacted before January 8, 1987, and is applicable to products before January 3, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent lamp ballasts, was prescribed or enacted before June 28, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent or incandescent lamps, flow rate requirements for showerheads or faucets, or water use requirements for water closets or urinals, was prescribed or enacted before October 24, 1992; or

**(B)** in the case of any portion of any regulation that establishes requirements for general service incandescent lamps, intermediate base incandescent lamps, or candelabra base lamps, was enacted or adopted by the State of California or Nevada before December 4, 2007, except that--

**(i)** the regulation adopted by the California Energy Commission with an effective date of January 1, 2008, shall only be effective until the effective date of the Federal standard for the applicable lamp category under [subparagraphs \(A\), \(B\), and \(C\) of section 6295\(i\)\(1\)](#) of this title; and

**(ii)** the States of California and Nevada may, at any time, modify or adopt a State standard for general service lamps to conform with Federal standards with effective dates no earlier than 12 months prior to the Federal effective dates prescribed under [subparagraphs \(A\), \(B\), and \(C\) of section 6295\(i\)\(1\)](#) of this title, at which time any prior regulations adopted by the State of California or Nevada shall no longer be effective.

**(iii)** Repealed. [Pub.L. 112-210](#), § 10(a)(9)(C), Dec. 18, 2012, 126 Stat. 1525

**(2)** is a State procurement regulation described in subsection (e);

**(3)** is a regulation described in subsection (f)(1) or is prescribed or enacted in a building code for new construction described in subsection (f)(2);

**(4)** is a regulation prohibiting the use in pool heaters of a constant burning pilot, or is a regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which [paragraph \(5\) of section 6295\(g\)](#) of this title is applicable, or is a regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those to which [section 6295\(i\)](#) of this title is applicable, or is a regulation (or portion thereof) regulating showerheads or faucets other than those to which [section 6295\(j\)](#) of this title is applicable or regulating lavatory faucets (other than metering faucets) for installation in public places, or is a regulation (or portion thereof) regulating water closets or urinals other than those to which [section 6295\(k\)](#) of this title is applicable;

**(5)** is a regulation described in subsection (d)(5)(B) for which a waiver has been granted under subsection (d);

**(6)** is a regulation effective on or after January 1, 1992, concerning the energy efficiency or energy use of television sets; or

(7) is a regulation (or portion thereof) concerning the water efficiency or water use of low consumption flushometer valve water closets.

**(c) General rule of preemption for energy conservation standards when Federal standard becomes effective for product**

Except as provided in [section 6295\(b\)\(3\)\(A\)\(ii\)](#) of this title, [subparagraphs \(B\) and \(C\) of section 6295\(j\)\(3\)](#) of this title, and [subparagraphs \(B\) and \(C\) of section 6295\(k\)\(3\)](#) of this title and effective on the effective date of an energy conservation standard established in or prescribed under [section 6295](#) of this title for any covered product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product unless the regulation--

(1) is a regulation described in paragraph (2) or (4) of subsection (b), except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which [paragraph \(5\) of section 6295\(g\)](#) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts, except that a State regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those for which [section 6295\(i\)](#) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary and is applicable to such lamps;

(2) is a regulation which has been granted a waiver under subsection (d);

(3) is in a building code for new construction described in subsection (f)(3);

(4) is a regulation concerning the water use of lavatory faucets adopted by the State of New York or the State of Georgia before October 24, 1992;

(5) is a regulation concerning the water use of lavatory or kitchen faucets adopted by the State of Rhode Island prior to October 24, 1992;

(6) is a regulation (or portion thereof) concerning the water efficiency or water use of gravity tank-type low consumption water closets for installation in public places, except that such a regulation shall be effective only until January 1, 1997; or

(7)(A) is a regulation concerning standards for commercial prerinse spray valves adopted by the California Energy Commission before January 1, 2005; or

(B) is an amendment to a regulation described in subparagraph (A) that was developed to align California regulations with changes in American Society for Testing and Materials Standard F2324;

(8)(A) is a regulation concerning standards for pedestrian modules adopted by the California Energy Commission before January 1, 2005; or

(B) is an amendment to a regulation described in subparagraph (A) that was developed to align California regulations to changes in the Institute for Transportation Engineers standards, entitled “Performance Specification: Pedestrian Traffic Control Signal Indications”; and

(9) is a regulation concerning metal halide lamp fixtures adopted by the California Energy Commission on or before January 1, 2011, except that--

(A) if the Secretary fails to issue a final rule within 180 days after the deadlines for rulemakings in [section 6295\(hh\)](#) of this title, notwithstanding any other provision of this section, preemption shall not apply to a regulation concerning metal halide lamp fixtures adopted by the California Energy Commission--

(i) on or before July 1, 2015, if the Secretary fails to meet the deadline specified in [section 6295\(hh\)\(2\)](#) of this title; or

(ii) on or before July 1, 2022, if the Secretary fails to meet the deadline specified in [section 6295\(hh\)\(3\)](#) of this title.

**(d) Waiver of Federal preemption**

(1)(A) Any State or river basin commission with a State regulation which provides for any energy conservation standard or other requirement with respect to energy use, energy efficiency, or water use for any type (or class) of covered product for which there is a Federal energy conservation standard under [section 6295](#) of this title may file a petition with the Secretary requesting a rule that such State regulation become effective with respect to such covered product.

(B) Subject to paragraphs (2) through (5), the Secretary shall, within the period described in paragraph (2) and after consideration of the petition and the comments of interested persons, prescribe such rule if the Secretary finds (and publishes such finding) that the State or river basin commission has established by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy or water interests.

(C) For purposes of this subsection, the term “unusual and compelling State or local energy or water interests” means interests which--

(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and

(ii) are such that the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.

The factors described in clause (ii) shall be evaluated within the context of the State's energy plan and forecast, and, with respect to a State regulation for which a petition has been submitted to the Secretary which provides for any energy conservation standard or requirement with respect to water use of a covered product, within the context of the water supply and groundwater



management plan, water quality program, and comprehensive plan (if any) of the State or river basin commission for improving, developing, or conserving a waterway affected by water supply development.

(2) The Secretary shall give notice of any petition filed under paragraph (1)(A) and afford interested persons a reasonable opportunity to make written comments, including rebuttal comments, thereon. The Secretary shall, within the 6-month period beginning on the date on which any such petition is filed, deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of, and the reasons for, such denial.

(3) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that such State regulation will significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis. In determining whether to make such finding, the Secretary shall evaluate all relevant factors, including--

(A) the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction--

(i) in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(4) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that the State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(5) No final rule prescribed by the Secretary under this subsection may--

(A) permit any State regulation to become effective with respect to any covered product manufactured within three years after such rule is published in the Federal Register or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation; or

(B) become effective with respect to a covered product manufactured before the earliest possible effective date specified in [section 6295](#) of this title for the initial amendment of the energy conservation standard established in such section for the covered product; except that such rule may become effective before such date if the Secretary finds (and publishes such finding) that, in addition to the other requirements of this subsection the State has established, by a preponderance of the evidence, that--

(i) there exists within the State an energy emergency condition or, if the State regulation provides for an energy conservation standard or other requirement with respect to the water use of a covered product for which there is a Federal energy conservation standard under [subsection \(j\)](#) or [\(k\) of section 6295](#) of this title, a water emergency condition, which--

(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy or, in the case of a water emergency condition, water or wastewater treatment, to its residents at less than prohibitive costs; and

(II) cannot be substantially alleviated by the importation of energy or, in the case of a water emergency condition, by the importation of water, or by the use of interconnection agreements; and

(ii) the State regulation is necessary to alleviate substantially such condition.

(6) In any case in which a State is issued a rule under paragraph (1) with respect to a covered product and subsequently a Federal energy conservation standard concerning such product is amended pursuant to [section 6295](#) of this title, any person subject to such State regulation may file a petition with the Secretary requesting the Secretary to withdraw the rule issued under paragraph (1) with respect to such product in such State. The Secretary shall consider such petition in accordance with the requirements of paragraphs (1), (3), and (4), except that the burden shall be on the petitioner to show by a preponderance of the evidence that the rule received by the State under paragraph (1) should be withdrawn as a result of the amendment to the Federal standard. If the Secretary determines that the petitioner has shown that the rule issued by the State should be so withdrawn, the Secretary shall withdraw it.

**(e) Exception for certain State procurement standards**

Any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.

**(f) Exception for certain building code requirements**

(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part

until the effective date of the energy conservation standard established in or prescribed under [section 6295](#) of this title for such covered product.

(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under [section 6295](#) of this title for such covered product if the code does not require that the energy efficiency of such covered product exceed--

(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsection (b)(1) or (b)(5),

whichever is higher.

(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under [section 6295](#) of this title, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under [section 6295](#) of this title, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under [section 6295](#) of this title or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use or equivalent cost basis.

(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under [section 6295](#) of this title, the baseline building designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency

of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

(F) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

(G) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under [section 6293](#) of this title, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under [section 6293](#) of this title or other technically accurate documented procedure.

(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under [section 6295](#) of this title and the applicable standard of such State, if any, that has been granted a waiver under subsection (d), such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d).

**(g) No warranty**

Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.

**CREDIT(S)**

(Pub.L. 94-163, Title III, § 327, Dec. 22, 1975, 89 Stat. 926; Pub.L. 95-619, Title IV, § 424, Nov. 9, 1978, 92 Stat. 3263; Pub.L. 100-12, § 7, Mar. 17, 1987, 101 Stat. 117; Pub.L. 100-357, § 2(f), June 28, 1988, 102 Stat. 674; Pub.L. 102-486, Title I, § 123(h), Oct. 24, 1992, 106 Stat. 2829; Pub.L. 109-58, Title I, § 135(d), Aug. 8, 2005, 119 Stat. 634; Pub.L. 110-140, Title III, §§ 321(d), 324(f), Dec. 19, 2007, 121 Stat. 1585, 1594; Pub.L. 112-210, § 10(a)(9), Dec. 18, 2012, 126 Stat. 1524.)

**Notes of Decisions (5)**

42 U.S.C.A. § 6297, 42 USCA § 6297

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7408

§ 7408. Air quality criteria and control techniques

Effective: November 10, 1998

[Currentness](#)

**(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants**

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant--

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on--

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

**(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership**

(1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

**(c) Review, modification, and reissuance of criteria or information**

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO<sub>2</sub> over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

**(d) Publication in Federal Register; availability of copies for general public**

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

**(e) Transportation planning and guidelines**

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990, and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on--

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

**(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health**

(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter--

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to--

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.<sup>1</sup>

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of--

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.



**(g) Assessment of risks to ecosystems**

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

**(h) RACT/BACT/LAER clearinghouse**

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

**CREDIT(S)**

(July 14, 1955, c. 360, Title I, § 108, as added Pub.L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub.L. 95-95, Title I, §§ 104, 105, Title IV, § 401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub.L. 101-549, Title I, §§ 108(a) to (c), (o), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub.L. 105-362, Title XV, § 1501(b), Nov. 10, 1998, 112 Stat. 3294.)


Notes of Decisions (28)

**Footnotes**

<sup>1</sup> So in original. The period probably should be a semicolon.

42 U.S.C.A. § 7408, 42 USCA § 7408

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated  
Title 42. The Public Health and Welfare  
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)  
Subchapter I. Programs and Activities  
Part D. Plan Requirements for Nonattainment Areas  
Subpart 1. Nonattainment Areas in General (Refs & Annos)

42 U.S.C.A. § 7507

§ 7507. New motor vehicle emission standards in nonattainment areas

Currentness

Notwithstanding [section 7543\(a\)](#) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in [section 7543\(a\)](#) of this title respecting such vehicles if--

- (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and
- (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a “third vehicle”) or otherwise create such a “third vehicle”.

**CREDIT(S)**

(July 14, 1955, c. 360, Title I, § 177, as added [Pub.L. 95-95, Title I, § 129\(b\)](#), Aug. 7, 1977, 91 Stat. 750; amended [Pub.L. 101-549, Title II, § 232](#), Nov. 15, 1990, 104 Stat. 2529.)

[Notes of Decisions \(13\)](#)

42 U.S.C.A. § 7507, 42 USCA § 7507

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 85. Air Pollution Prevention and Control (Refs &amp; Annos)

## Subchapter II. Emission Standards for Moving Sources

## Part A. Motor Vehicle Emission and Fuel Standards (Refs &amp; Annos)

## 42 U.S.C.A. § 7521

## § 7521. Emission standards for new motor vehicles or new motor vehicle engines

## Currentness

**(a) Authority of Administrator to prescribe by regulation**

Except as otherwise provided in subsection (b)--

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

**(3)(A) In general**

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

**(B) Revised standards for heavy duty trucks**

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO<sub>x</sub>) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

**(C) Lead time and stability**

Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

**(D) Rebuilding practices**

The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

**(E) Motorcycles**

For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under [section 7525\(f\)\(1\)](#) of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

**(4)(A)** Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to [section 7548](#) of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term “fill pipe” shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

#### (6) Onboard vapor recovery

Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based (“onboard”) systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

#### IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

| Model year commencing after<br>standards promulgated | Percentage* |
|--|-------------|
| Fourth.....  | 40          |

|                  |     |
|------------------|-----|
| Fifth.....       | 80  |
| After Fifth..... | 100 |

\*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of [section 7511a\(b\)\(3\)](#) of this title (relating to stage II gasoline vapor recovery) for areas classified under [section 7511](#) of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such [section 7511a\(b\)\(3\)](#) of this title for areas classified under [section 7511](#) of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

**(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives**

**(1)(A)** The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

**(B)** The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that--

**(i)** the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

**(ii)** such manufacturer lacks the financial resources and technological ability to develop such technology.

**(C)** The Administrator may promulgate regulations under subsection (a)(1) revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any

revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part--

(A)(i) The term “model year” with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term “model year” shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining “model year” otherwise than as provided in clause (i).

(B) Repealed. Pub.L. 101-549, Title II, § 230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term “heavy duty vehicle” means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3)<sup>1</sup> Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines--

(A) that such waiver would not endanger public health,

(B) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(C) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act upon the expiration of the waiver.



No waiver under this subparagraph<sup>2</sup> granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

**(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information**

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

**(d) Useful life of vehicles**

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and [section 7541](#) of this title. Such regulations shall provide that except where a different useful life period is specified in this subchapter useful life shall--

(1) in the case of light duty vehicles and light duty vehicle engines and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs, except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under [section 7541](#) of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.



**(e) New power sources or propulsion systems**

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to [section 7525\(a\)](#) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a).

**(f)<sup>3</sup> High altitude regulations**

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b). This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) [Section 7607\(d\)](#) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to--

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

**(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993****(1) NMHC, CO, and NO<sub>x</sub>**

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO<sub>x</sub>) from light-duty trucks (LDTs) of

up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

**TABLE G--EMISSION STANDARDS FOR NMHC, CO, AND NO<sub>x</sub> FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES**

| Vehicle type   | Column A          |     |                 | Column B            |     |                 |
|--|-------------------|-----|-----------------|---------------------|-----|-----------------|
|  | (5 yrs/50,000 mi) |     |                 | (10 yrs/100,000 mi) |     |                 |
|  | NMHC              | CO  | NO <sub>x</sub> | NMHC                | CO  | NO <sub>x</sub> |
| LDTs (0-3,750 lbs. LVW) and light-duty vehicles..... | 0.25              | 3.4 | 0.4*            | 0.31                | 4.2 | 0.6*            |
| LDTs (3,751-5,750 lbs. LVW).....                     | 0.32              | 4.4 | 0.7**           | 0.40                | 5.5 | 0.97            |

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

\* In the case of diesel-fueled LDTs (0-3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO<sub>x</sub>, the applicable standards for NO<sub>x</sub> shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

\*\* This standard does not apply to diesel-fueled LDTs (3,751-5,750 lbs. LVW).

**IMPLEMENTATION SCHEDULE FOR TABLE G STANDARDS**

| Model year      | Percentage * |
|-----------------|--------------|
| 1994.....       | 40           |
| 1995.....       | 80           |
| after 1995..... | 100          |

\* Percentages in the table refer to a percentage of each manufacturer's sales volume.

**(2) PM Standard**

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

**PM STANDARD FOR LDTs OF UP TO 6,000 LBS. GVWR**

| Useful life period | Standard    |
|--------------------|-------------|
| 5/50,000.....      | 0.80<br>gpm |
| 10/100,000.....    | 0.10<br>gpm |

The applicable useful life, for purposes of certification under [section 7525](#) of this title and for purposes of in-use compliance under [section 7541](#) of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under [section 7525](#) of this title and for purposes of in-use compliance under [section 7541](#) of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

**IMPLEMENTATION SCHEDULE FOR PM STANDARDS**

| Model year      | Light-duty vehicles | LDTs  |
|-----------------|---------------------|-------|
| 1994.....       | 40%*                | ..... |
| 1995.....       | 80%*                | 40%*  |
| 1996.....       | 100%*               | 80%*  |
| after 1996..... | 100%*               | 100%* |

\* Percentages in the table refer to a percentage of each manufacturer's sales volume.

**(h) Light-duty trucks of more than 6,000 lbs. GVWR; standards for model years after 1995**

Effective with respect to the model year 1996 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO<sub>x</sub>), and particulate matter (PM) from light-duty trucks (LDTs) of more than 6,000 lbs. gross vehicle weight rating (GVWR) shall contain standards which provide that

emissions from a specified percentage of each manufacturer's sales volume of such trucks shall comply with the levels specified in table H. The specified percentage shall be 50 percent in model year 1996 and 100 percent thereafter.

**TABLE H--EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE AND DIESEL FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR**

| LDT Test weight     | Column A          |     |                 | Column B            |     |                 |      |
|---------------------|-------------------|-----|-----------------|---------------------|-----|-----------------|------|
|                     | (5 yrs/50,000 mi) |     |                 | (11 yrs/120,000 mi) |     |                 |      |
|                     | NMHC              | CO  | NO <sub>x</sub> | NMHC                | CO  | NO <sub>x</sub> | PM   |
| 3,751-5,750 lbs. TW | 0.32              | 4.4 | 0.7*            | 0.46                | 6.4 | 0.98            | 0.10 |
| Over 5,750 lbs. TW  | 0.39              | 5.0 | 1.1*            | 0.56                | 7.3 | 1.53            | 0.12 |

Standards are expressed in grams per mile (GPM).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent) whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.

\* Not applicable to diesel-fueled LDTs.

**(i) Phase II study for certain light-duty vehicles and light-duty trucks**

(1) The Administrator, with the participation of the Office of Technology Assessment, shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this subchapter. The study shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less specified in the following table:

**TABLE 3--PENDING EMISSION STANDARDS FOR GASOLINE AND DIESEL FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS**

| Pollutant             | Emission level * |
|-----------------------|------------------|
| NMHC.....             | 0.125<br>GPM     |
| NO <sub>x</sub> ..... | 0.2<br>GPM       |

CO.....

1.7  
GPM

\* Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (d) of this section and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

Such study shall also consider other standards and useful life periods which are more stringent or less stringent than those set forth in table 3 (but more stringent than those referred to in subsections (g) and (h)).

**(2)(A)** As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards, taking into consideration the waiver provisions of [section 7543\(b\)](#) of this title. As part of such study, the Administrator shall also examine--

**(i)** the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) for model years commencing not earlier than after January 1, 2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

**(ii)** the need for, and cost effectiveness of, obtaining further reductions in emissions from such light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards pursuant to State implementation plans and other requirements of this chapter, including their feasibility and cost effectiveness.

**(B)** The Administrator shall submit a report to Congress no later than June 1, 1997, containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submittal of such report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of such comments in the report to Congress.

**(3)(A)** Based on the study under paragraph (1) the Administrator shall determine, by rule, within 3 calendar years after the report is submitted to Congress, but not later than December 31, 1999, whether--

**(i)** there is a need for further reductions in emissions as provided in paragraph (2)(A);

**(ii)** the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

**(iii)** obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii).

The rulemaking under this paragraph shall commence within 3 months after submission of the report to Congress under paragraph (2)(B).

**(B)** If the Administrator determines under subparagraph (A) that--

**(i)** there is no need for further reductions in emissions as provided in paragraph (2)(A);

**(ii)** the technology for meeting more stringent emission standards will not be available as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); or

**(iii)** obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (g) and (h). Nothing in this paragraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less at any other time thereafter in accordance with subsection (a).

**(C)** If the Administrator determines under subparagraph (A) that--

**(i)** there is a need for further reductions in emissions as provided in paragraph (2)(A);

**(ii)** the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

**(iii)** obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall either promulgate the standards (and useful life periods) set forth in Table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) which are more stringent than those referred to in subsections (g) and (h). Any such standards (or useful life periods) promulgated by the Administrator shall take effect with respect to any such vehicles or engines no earlier than the model year 2003 but not later than model year 2006, as determined by the Administrator in the rule.

**(D)** Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in Table 3 shall be promulgated in the rulemaking required under this paragraph. The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of [section 7604\(a\)\(2\)](#) of this title (relating to citizen suits).

(E) Unless the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B) or to postpone the effective date of standards referred to in Table 3 in paragraph (1) or to establish alternative standards as provided in subparagraph (C), effective with respect to model years commencing after January 1, 2003, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), oxides of nitrogen (NO<sub>x</sub>), and carbon monoxide (CO) from motor vehicles and motor vehicle engines in the classes specified in Table 3 in paragraph (1) above shall contain standards which provide that emissions may not exceed the pending emission levels specified in Table 3 in paragraph (1).

**(j) Cold CO standard**

**(1) Phase I**

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1994 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain standards which provide that emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards shall take effect after model year 1993 according to a phase-in schedule which requires a percentage of each manufacturer's sales volume of light-duty vehicles and light-duty trucks to comply with applicable standards after model year 1993. The percentage shall be as specified in the following table:

**PHASE-IN SCHEDULE FOR COLD START STANDARDS**

| Model Year          | Percentage |
|---------------------|------------|
| 1994.....           | 40         |
| 1995.....           | 80         |
| 1996 and after..... | 100        |

**(2) Phase II**

(A) Not later than June 1, 1997, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from model year 2001 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

(B)(i) If as of June 1, 1997, 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from model year 2002 and later model year light-duty vehicles and light-duty trucks shall contain standards which provide that emissions of carbon monoxide from such vehicles and trucks when operated at 20 degrees Fahrenheit may not exceed 3.4 grams per mile (gpm) in the case of light-duty vehicles and 4.4 grams per mile (gpm) in the case of light-duty trucks up to 6,000 GVWR and a level comparable in stringency in the case of light-duty trucks 6,000 GVWR and above.

(ii) In determining for purposes of this subparagraph whether 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the Administrator shall exclude the areas of Steubenville, Ohio, and Oshkosh, Wisconsin.

### **(3) Useful-life for phase I and phase II standards**

In the case of the standards referred to in paragraphs (1) and (2), for purposes of certification under [section 7525](#) of this title and in-use compliance under [section 7541](#) of this title, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend such useful life period (for purposes of [section 7525](#) of this title, or [section 7541](#) of this title, or both) if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life. If the Administrator extends such useful life period, the Administrator may make an appropriate adjustment of applicable standards for such extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (d).

### **(4) Heavy-duty vehicles and engines**

The Administrator may also promulgate regulations under subsection (a)(1) applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.

### **(k) Control of evaporative emissions**

The Administrator shall promulgate (and from time to time revise) regulations applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles--

(1) during operation; and

(2) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility, and to cost, energy, and safety factors associated with the application of the appropriate technology. The Administrator shall commence a rulemaking under this subsection within 12 months after November 15, 1990. If final regulations are not promulgated under this subsection within 18 months after November 15, 1990, the Administrator shall submit a statement to the Congress containing an explanation of the reasons for the delay and a date certain for promulgation of such final regulations in accordance with this chapter. Such date certain shall not be later than 15 months after the expiration of such 18 month deadline.

### **(l) Mobile source-related air toxics**

#### **(1) Study**

Not later than 18 months after November 15, 1990, the Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this chapter and associated with motor vehicles and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such



controls. The study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1, 3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

## **(2) Standards**

Within 54 months after November 15, 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) or [section 7545\(c\)\(1\)](#) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a), the availability and costs of the technology, and noise, energy, and safety factors, and lead time. Such regulations shall not be inconsistent with standards under subsection (a). The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

## **(m) Emissions control diagnostics**

### **(1) Regulations**

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of--

**(A)** accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

**(B)** alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

**(C)** storing and retrieving fault codes specified by the Administrator, and

**(D)** providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

### **(2) Effective date**

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

### (3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under [section 7541\(a\)](#) and [\(b\)](#) of this title.

### (4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require--

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

### (5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of [section 7542\(c\)](#) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under [section 7542\(c\)](#) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to [section 7542\(c\)](#) of this title, in carrying out the Administrator's responsibilities under this section.

### (f) <sup>4</sup> Model years after 1990

For model years prior to model year 1994, the regulations under subsection (a) applicable to buses other than those subject to standards under [section 7554](#) of this title shall contain a standard which provides that emissions of particulate matter (PM) from such buses may not exceed the standards set forth in the following table:

#### PM STANDARD FOR BUSES

| Model year | Standard * |
|------------|------------|
|------------|------------|

|                          |      |
|--------------------------|------|
| 1991.....                | 0.25 |
| 1992.....                | 0.25 |
| 1993 and thereafter..... | 0.10 |

\* Standards are expressed in grams per brake horsepower hour (g/bhp/hr).

## CREDIT(S)

(July 14, 1955, c. 360, Title II, § 202, as added [Pub.L. 89-272, Title I, § 101\(8\)](#), Oct. 20, 1965, 79 Stat. 992; amended [Pub.L. 90-148](#), § 2, Nov. 21, 1967, 81 Stat. 499; [Pub.L. 91-604](#), § 6(a), Dec. 31, 1970, 84 Stat. 1690; [Pub.L. 93-319](#), § 5, June 22, 1974, 88 Stat. 258; [Pub.L. 95-95, Title II, §§ 201, 202\(b\), 213\(b\), 214\(a\), 215 to 217, 224\(a\), \(b\), \(g\)](#), Title IV, § 401(d), Aug. 7, 1977, 91 Stat. 751 to 753, 758 to 761, 765, 767, 769, 791; [Pub.L. 95-190](#), § 14(a)(60) to (65), (b)(5), Nov. 16, 1977, 91 Stat. 1403, 1405; [Pub.L. 101-549, Title II, §§ 201 to 207, 227\(b\), 230\(1\) to \(5\)](#), Nov. 15, 1990, 104 Stat. 2472 to 2481, 2507, 2529.)

## EXECUTIVE ORDERS

### EXECUTIVE ORDER NO. 13432

<May 14, 2007, 72 F.R. 27717, as amended by [Ex. Ord. No. 13693](#), § 16(e), March 19, 2015, 80 F.R. 15871>

### Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. Policy.** It is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.

**Sec. 2. Definitions.** As used in this order:

(a) “agencies” refers to the Department of Transportation, the Department of Energy, and the Environmental Protection Agency, and all units thereof, and “agency” refers to any of them;

(b) “alternative fuels” has the meaning specified for that term in section 301(2) of the Energy Policy Act of 1992 ([42 U.S.C. 13211\(2\)](#));

(c) “authorities” include the Clean Air Act ([42 U.S.C. 7401-7671q](#)), the Energy Policy Act of 1992 (Public Law 102-486), the Energy Policy Act of 2005 (Public Law 109-58), the Energy Policy and Conservation Act (Public Law 94-163), and any other current or future laws or regulations that may authorize or require any of the agencies to take regulatory action that directly or indirectly affects emissions of greenhouse gases from motor vehicles;

(d) “greenhouse gases” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride [sic], and sulfur hexafluoride;

- (e) “motor vehicle” has the meaning specified for that term in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));
- (f) “nonroad engine” has the meaning specified for that term in section 216(10) of the Clean Air Act (42 U.S.C. 7550(10));
- (g) “nonroad vehicle” has the meaning specified for that term in section 216(11) of the Clean Air Act (42 U.S.C. 7550(11));
- (h) “regulation” has the meaning specified for that term in section 3(d) of Executive Order 12866 of September 30, 1993, as amended (Executive Order 12866); and
- (i) “regulatory action” has the meaning specified for that term in section 3(e) of Executive Order 12866.

**Sec. 3. Coordination Among the Agencies.** In carrying out the policy set forth in section 1 of this order, the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall:

- (a) undertake such a regulatory action, to the maximum extent permitted by law and determined by the head of the agency to be practicable, jointly with the other agencies;
- (b) in undertaking such a regulatory action, consider, in accordance with applicable law, information and recommendations provided by the other agencies;
- (c) in undertaking such a regulatory action, exercise authority vested by law in the head of such agency effectively, in a manner consistent with the effective exercise by the heads of the other agencies of the authority vested in them by law; and
- (d) obtain, to the extent permitted by law, concurrence or other views from the heads of the other agencies during the development and preparation of the regulatory action and prior to any key decision points during that development and preparation process, and in no event later than 30 days prior to publication of such action.

**Sec. 4. Duties of the Heads of Agencies.** (a) To implement this order, the head of each agency shall:

- (1) designate appropriate personnel within the agency to (i) direct the agency's implementation of this order, (ii) ensure that the agency keeps the other agencies and the Office of Management and Budget informed of the agency regulatory actions to which section 3 refers, and (iii) coordinate such actions with the agencies;
- (2) in coordination as appropriate with the Committee on Climate Change Science and Technology, continue to conduct and share research designed to advance technologies to further the policy set forth in section 1 of this order;
- (3) facilitate the sharing of personnel and the sharing of information among the agencies to further the policy set forth in section 1 of this order;
- (4) coordinate with the other agencies to avoid duplication of requests to the public for information from the public in the course of undertaking such regulatory action, consistent with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.); and
- (5) consult with the Secretary of Agriculture whenever a regulatory action will have a significant effect on agriculture related to the production or use of ethanol, biodiesel, or other renewable fuels, including actions undertaken in whole or in part based on authority or requirements in title XV of the Energy Policy Act of 2005, or the amendments made by such title, or when otherwise appropriate or required by law.

(b) To implement this order, the heads of the agencies acting jointly may allocate as appropriate among the agencies administrative responsibilities relating to regulatory actions to which section 3 refers, such as publication of notices in the **Federal Register** and receipt of comments in response to notices.

**Sec. 5. Duties of the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality.** (a) The Director of the Office of Management and Budget, with such assistance from the Chairman of the Council on Environmental Quality as the Director may require, shall monitor the implementation of this order by the heads of the agencies and shall report thereon to the President from time to time, and not less often than semiannually, with any recommendations of the Director for strengthening the implementation of this order.

(b) To implement this order and further the policy set forth in section 1, the Director of the Office of Management and Budget may require the heads of the agencies to submit reports to, and coordinate with, such Office on matters related to this order.

**Sec. 6. General Provisions.** (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

**EXECUTIVE ORDER NO. 14037**

<August 5, 2021, 86 F.R. 43583>

**Strengthening American Leadership in Clean Cars and Trucks**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the interests of American workers, businesses, consumers, and communities, it is hereby ordered as follows:

**Section 1. Policy.** America must lead the world on clean and efficient cars and trucks. That means bolstering our domestic market by setting a goal that 50 percent of all new passenger cars and light trucks sold in 2030 be zero-emission vehicles, including battery electric, plug-in hybrid electric, or fuel cell electric vehicles. My Administration will prioritize setting clear standards, expanding key infrastructure, spurring critical innovation, and investing in the American autoworker. This will allow us to boost jobs\_with good pay and benefits\_across the United States along the full supply chain for the automotive sector, from parts and equipment manufacturing to final assembly.

It is the policy of my Administration to advance these objectives in order to improve our economy and public health, boost energy security, secure consumer savings, advance environmental justice, and address the climate crisis.

**Sec. 2. Light-, Medium-, and Certain Heavy-Duty Vehicles Multi-Pollutant and Fuel Economy Standards for 2027 and Later.**

(a) The Administrator of the Environmental Protection Agency (EPA) shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Clean Air Act (42 U.S.C. 7401-7671q) to establish new multi-pollutant emissions standards, including for greenhouse gas emissions, for light-and medium-duty vehicles beginning with model year 2027 and extending through and including at least model year 2030.

(b) The Secretary of Transportation shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Energy Independence and Security Act of 2007 (Public Law 110-140, 121 Stat. 1492) (EISA) to establish new fuel economy standards for passenger cars and light-duty trucks beginning with model year 2027 and extending through and including at least model year 2030.

(c) The Secretary of Transportation shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under EISA to establish new fuel efficiency standards for heavy-duty pickup trucks and vans beginning with model year 2028 and extending through and including at least model year 2030.

**Sec. 3. Heavy-Duty Engines and Vehicles Multi-Pollutant Standards for 2027 and Later.** (a) The Administrator of the EPA shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Clean Air Act to establish new oxides of nitrogen standards for heavy-duty engines and vehicles beginning with model year 2027 and extending through and including at least model year 2030.

(b) The Administrator of the EPA shall, as appropriate and consistent with applicable law, and in consideration of the role that zero-emission heavy-duty vehicles might have in reducing emissions from certain market segments, consider updating the existing greenhouse gas emissions standards for heavy-duty engines and vehicles beginning with model year 2027 and extending through and including at least model year 2029.

**Sec. 4. Medium-and Heavy-Duty Engines and Vehicles Greenhouse Gas and Fuel Efficiency Standards as Soon as 2030 and Later.** (a) The Administrator of the EPA shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Clean Air Act to establish new greenhouse gas emissions standards for heavy-duty engines and vehicles to begin as soon as model year 2030.

(b) The Secretary of Transportation shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under EISA to establish new fuel efficiency standards for medium-and heavy-duty engines and vehicles to begin as soon as model year 2030.

**Sec. 5. Rulemaking Targets.** (a) With respect to the rulemaking described in section 3(a) of this order, the Administrator of the EPA shall, as appropriate and consistent with applicable law, consider issuing a notice of proposed rulemaking by January 2022 and any final rulemaking by December 2022.

(b) With respect to the other rulemakings described in section 2 and section 4 of this order, the Secretary of Transportation and the Administrator of the EPA shall, as appropriate and consistent with applicable law, consider issuing any final rulemakings no later than July 2024.

**Sec. 6. Coordination and Engagement.** (a) The Secretary of Transportation and the Administrator of the EPA shall coordinate, as appropriate and consistent with applicable law, during the consideration of any rulemakings pursuant to this order.

(b) The Secretary of Transportation and the Administrator of the EPA shall consult with the Secretaries of Commerce, Labor, and Energy on ways to achieve the goals laid out in section 1 of this order, to accelerate innovation and manufacturing in the automotive sector, to strengthen the domestic supply chain for that sector, and to grow jobs that provide good pay and benefits.

(c) Given the significant expertise and historical leadership demonstrated by the State of California with respect to establishing emissions standards for light-, medium-, and heavy-duty vehicles, the Administrator of the EPA shall coordinate the agency's activities pursuant to sections 2 through 4 of this order, as appropriate and consistent with applicable law, with the State of California as well as other States that are leading the way in reducing vehicle emissions, including by adopting California's standards.

(d) In carrying out any of the actions described in this order, the Secretary of Transportation and the Administrator of the EPA shall seek input from a diverse range of stakeholders, including representatives from labor unions, States, industry, environmental justice organizations, and public health experts.

**Sec. 7. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN JR.

[Notes of Decisions \(50\)](#)

## Footnotes

<sup>1</sup> So in original. Probably should be “(4)”.

<sup>2</sup> So in original. Probably should be “paragraph”.

<sup>3</sup> Another subsec. (f) is set out following subsec. (m).

<sup>4</sup> So in original. Probably should be (n).

42 U.S.C.A. § 7521, 42 USCA § 7521

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.



## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 85. Air Pollution Prevention and Control (Refs &amp; Annos)

## Subchapter II. Emission Standards for Moving Sources

## Part C. Clean Fuel Vehicles (Refs &amp; Annos)

## 42 U.S.C.A. § 7581

## § 7581. Definitions

## Currentness

For purposes of this part--

**(1) Terms defined in part A**

The definitions applicable to part A under [section 7550](#) of this title shall also apply for purposes of this part.

**(2) Clean alternative fuel**

The term “clean alternative fuel” means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this subchapter when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, the term “clean alternative fuel” means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under [section 7583\(d\)\(2\)](#) of this title when operating on clean alternative fuel (or any CARB standards which replaces such standards pursuant to [section 7583\(e\)](#) of this title).

**(3) NMOG**

The term nonmethane organic gas (“NMOG”) means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic gases containing 5 or fewer carbon atoms (i.e., aldehydes, ketones, alcohols, ethers, etc.), and all known alkanes, alkenes, alkynes, and aromatics containing 12 or fewer carbon atoms. To demonstrate compliance with a NMOG standard, NMOG emissions shall be measured in accordance with the “California Non-Methane Organic Gas Test Procedures”. In the case of vehicles using fuels other than base gasoline, the level of NMOG emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.

**(4) Base gasoline**

The term “base gasoline” means gasoline which meets the following specifications:

Specifications of Base Gasoline Used as  
Basis for Reactivity Readjustment:



|                               |        |
|-------------------------------|--------|
| API gravity.....              | 57.8   |
| Sulfur, ppm.....              | 317    |
| Color.....                    | Purple |
| Benzene, vol. %.....          | 1.35   |
| Reid vapor pressure.....      | 8.7    |
| Drivability.....              | 1195   |
| Antiknock index.....          | 87.3   |
| Distillation, D-86° F         |        |
| IBP.....                      | 92     |
| 10%.....                      | 126    |
| 50%.....                      | 219    |
| 90%.....                      | 327    |
| EP.....                       | 414    |
| Hydrocarbon Type, Vol. % FIA: |        |
| Aromatics.....                | 30.9   |
| Olefins.....                  | 8.2    |
| Saturates.....                | 60.9   |

The Administrator shall modify the definitions of NMOG, base gasoline, and the methods for making reactivity adjustments, to conform to the definitions and method used in California under the Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board, so long as the California definitions are, in the aggregate, at least as protective of public health and welfare as the definitions in this section.

#### **(5) Covered fleet**

The term “covered fleet” means 10 or more motor vehicles which are owned or operated by a single person. In determining the number of vehicles owned or operated by a single person for purposes of this paragraph, all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person. The term “covered fleet” shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles).

#### **(6) Covered fleet vehicle**

The term “covered fleet vehicle” means only a motor vehicle which is--

- (i) in a vehicle class for which standards are applicable under this part; and
- (ii) in a covered fleet which is centrally fueled (or capable of being centrally fueled).

No vehicle which under normal operations is garaged at a personal residence at night shall be considered to be a vehicle which is capable of being centrally fueled within the meaning of this paragraph.

#### **(7) Clean-fuel vehicle**

The term “clean-fuel vehicle” means a vehicle in a class or category of vehicles which has been certified to meet for any model year the clean-fuel vehicle standards applicable under this part for that model year to clean-fuel vehicles in that class or category.

#### **CREDIT(S)**

(July 14, 1955, c. 360, Title II, § 241, as added [Pub.L. 101-549, Title II, § 229\(a\)](#), Nov. 15, 1990, 104 Stat. 2511.)

42 U.S.C.A. § 7581, 42 USCA § 7581

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter II. Emission Standards for Moving Sources

Part C. Clean Fuel Vehicles (Refs & Annos)

42 U.S.C.A. § 7583

§ 7583. Standards for light-duty clean-fuel vehicles

Currentness

**(a) Exhaust standards for light-duty vehicles and certain light-duty trucks**

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (gvwr) (but not including light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw)) or light-duty vehicles:

**(1) Phase I**

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table:

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS  
OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

| Pollutant                  | NMOG  | CO  | NO <sub>x</sub> | PM    | HCHO           |
|----------------------------|-------|-----|-----------------|-------|----------------|
|                            |       |     |                 |       | (formaldehyde) |
| 50,000 mile standard.....  | 0.125 | 3.4 | 0.4             |       | 0.015          |
| 100,000 mile standard..... | 0.156 | 4.2 | 0.6             | 0.08* | 0.018          |

Standards are expressed in grams per mile (gpm).

\* Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

**(2) Phase II**

Beginning with model year 2001, for air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

| Pollutant                  | NMOG  | CO  | NO <sub>x</sub> | PM*  | HCHO           |
|----------------------------|-------|-----|-----------------|------|----------------|
|                            |       |     |                 |      | (formaldehyde) |
| 50,000 mile standard.....  | 0.075 | 3.4 | 0.2             |      | 0.015          |
| 100,000 mile standard..... | 0.090 | 4.2 | 0.3             | 0.08 | 0.018          |

Standards are expressed in grams per mile (gpm).

\* Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

**(b) Exhaust standards for light-duty trucks of more than 3,750 lbs. LVW and up to 5,750 lbs. LVW and up to 6,000 lbs. GVWR**

The standards set forth in this paragraph<sup>1</sup> shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw) but not more than 5,750 lbs. lvw and not more than 6,000 lbs. gross weight rating (GVWR):

**(1) Phase I**

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

| Pollutant                  | NMOG  | CO  | NO <sub>x</sub> | PM*  | HCHO<br>(formaldehyde) |
|----------------------------|-------|-----|-----------------|------|------------------------|
| 50,000 mile standard.....  | 0.160 | 4.4 | 0.7             |      | 0.018                  |
| 100,000 mile standard..... | 0.200 | 5.5 | 0.9             | 0.08 | 0.023                  |

Standards are expressed in grams per mile (gpm).

\* Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

**(2) Phase II**

Beginning with model year 2001, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

|  |  |  |  |  | HCHO |
|--|--|--|--|--|------|
|--|--|--|--|--|------|

| Pollutant                  | NMOG  | CO  | NO <sub>x</sub> | PM*  | (formaldehyde) |
|----------------------------|-------|-----|-----------------|------|----------------|
| 50,000 mile standard.....  | 0.100 | 4.4 | 0.4             |      | 0.018          |
| 100,000 mile standard..... | 0.130 | 5.5 | 0.5             | 0.08 | 0.023          |

Standards are expressed in grams per mile (gpm).

\* Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

**(c) Exhaust standards for light-duty trucks greater than 6,000 lbs. GVWR**

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 6,000 lbs. gross weight rating (GVWR) and less than or equal to 8,500 lbs. GVWR, beginning with model year 1998. For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions of vehicles within the test weight categories specified in the following table shall not exceed the levels specified in such table.

Test Weight Category: Up to 3,750 lbs. tw

|                            |       |     |                 |      | HCHO           |
|----------------------------|-------|-----|-----------------|------|----------------|
| Pollutant                  | NMOG  | CO  | NO <sub>x</sub> | PM*  | (formaldehyde) |
| 50,000 mile standard.....  | 0.125 | 3.4 | 0.4**           |      | 0.015          |
| 120,000 mile standard..... | 0.180 | 5.0 | 0.6             | 0.08 | 0.022          |

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

|                            |       |     |                 |      | HCHO           |
|----------------------------|-------|-----|-----------------|------|----------------|
| Pollutant                  | NMOG  | CO  | NO <sub>x</sub> | PM*  | (formaldehyde) |
| 50,000 mile standard.....  | 0.160 | 4.4 | 0.7**           |      | 0.018          |
| 120,000 mile standard..... | 0.230 | 6.4 | 1.0             | 0.10 | 0.027          |

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gvw

|                           |       |     |                 |     | HCHO           |
|---------------------------|-------|-----|-----------------|-----|----------------|
| Pollutant                 | NMOG  | CO  | NO <sub>x</sub> | PM* | (formaldehyde) |
| 50,000 mile standard..... | 0.195 | 5.0 | 1.1**           |     | 0.022          |

|                            |       |     |     |      |       |
|----------------------------|-------|-----|-----|------|-------|
| 120,000 mile standard..... | 0.280 | 7.3 | 1.5 | 0.12 | 0.032 |
|----------------------------|-------|-----|-----|------|-------|

Standards are expressed in grams per mile (gpm).

\* Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

\*\* Standard not applicable to diesel-fueled vehicles.

For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

#### (d) Flexible and dual-fuel vehicles

##### (1) In general

The Administrator shall establish standards and requirements under this section for the model year 1996 and thereafter for vehicles weighing not more than 8,500 lbs. gvwr which are capable of operating on more than one fuel. Such standards shall require that such vehicles meet the exhaust standards applicable under subsection<sup>2</sup> (a), (b), and (c) for CO, NO<sub>x</sub>, and HCHO, and if appropriate, PM for single-fuel vehicles of the same vehicle category and model year.

##### (2) Exhaust NMOG standard for operation on clean alternative fuel

In addition to standards for the pollutants referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below when the vehicle is operated on the clean alternative fuel for which such vehicle is certified:

#### NMOG Standards for Flexible- and Dual-Fueled Vehicles When Operating on Clean Alternative Fuel

##### Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty vehicles

|   |               | Column A | Column B |
|---|---------------|----------|----------|
| (50,000 mi.)  | (100,000 mi.) |          |          |
| Vehicle Type  | Standard      |          | Standard |
| (gpm)   | (gpm)         |          |          |
| Beginning MY 1996:                                    |               |          |          |
| LDT's (0-3,750 lbs. LVW) and light-duty vehicles..... |               | 0.125    | 0.156    |
| LDT's (3,751-5,750 lbs. LVW).....                     |               | 0.160    | 0.20     |
| Beginning MY 2001:                                    |               |          |          |
| LDT's (0-3,750 lbs. LVW) and light-duty vehicles..... |               | 0.075    | 0.090    |

|                                   |       |       |
|-----------------------------------|-------|-------|
| LDT's (3,751-5,750 lbs. LVW)..... | 0.100 | 0.130 |
|-----------------------------------|-------|-------|

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More than 6,000 lbs. GVWR

|                                  |              | Column A      | Column B |
|----------------------------------|--------------|---------------|----------|
| Vehicle Type                     | (50,000 mi.) | (120,000 mi.) |          |
| Standard                         | Standard     |               |          |
| Beginning MY 1998:               |              |               |          |
| LDT's (0-3,750 lbs. TW).....     |              | 0.125         | 0.180    |
| LDT's (3,751-5,750 lbs. TW)..... |              | 0.160         | 0.230    |
| LDT's (above 5,750 lbs. TW)..... |              | 0.195         | 0.280    |

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

**(3) NMOG standard for operation on conventional fuel**

In addition to the standards referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below:

NMOG Standards for Flexible- and Dual-Fueled Vehicles  
When Operating on Conventional Fuel

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty vehicles

|                    |               | Column A | Column B |
|--------------------|---------------|----------|----------|
| (50,000 mi.)       | (100,000 mi.) |          |          |
| Vehicle Type       | Standard      | Standard |          |
| (gpm)              | (gpm)         |          |          |
| Beginning MY 1996: |               |          |          |

|   |      |      |
|---|------|------|
| LDT's (0-3,750 lbs. LVW) and light-duty vehicles..... | 0.25 | 0.31 |
| LDT's (3,751-5,750 lbs. LVW).....                     | 0.32 | 0.40 |

Beginning MY 2001:

|   |       |       |
|---|-------|-------|
| LDT's (0-3,750 lbs. LVW) and light-duty vehicles..... | 0.125 | 0.156 |
| LDT's (3,751-5,750 lbs. LVW).....                     | 0.160 | 0.200 |

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

#### Light-duty Trucks of up to 6,000 lbs. GVWR

|                                  |              | Column A      | Column B |
|----------------------------------|--------------|---------------|----------|
| Vehicle Type                     | (50,000 mi.) | (120,000 mi.) |          |
| Standard                         | Standard     |               |          |
| Beginning MY 1998:               |              |               |          |
| LDT's (0-3,750 lbs. TW).....     |              | 0.25          | 0.36     |
| LDT's (3,751-5,750 lbs. TW)..... |              | 0.32          | 0.46     |
| LDT's (above 5,750 lbs. TW)..... |              | 0.39          | 0.56     |

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

### (e) Replacement by CARB standards

#### (1) Single set of CARB standards

If the State of California promulgates regulations establishing and implementing a single set of standards applicable in California pursuant to a waiver approved under [section 7543](#) of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and such set of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in [section 7582](#) of this title and subsection (a), (b), (c), or (d) of this section, such set of California standards shall apply to clean-fuel vehicles in such category in lieu of the standards otherwise applicable under [section 7582](#) of this title and subsection (a), (b), (c), or (d) of this section, as the case may be.

#### (2) Multiple sets of CARB standards



If the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under [section 7543](#) of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in [section 7582](#) of this title and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as “qualifying California standards” for purposes of this paragraph. Where more than one set of qualifying standards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under [section 7582](#) of this title and this section.

**(f) Less stringent CARB standards**

If the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board applicable to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section are modified after November 15, 1990, to provide an emissions standard which is less stringent than the otherwise applicable standard set forth in subsection (a), (b), (c), or (d), or if any effective date contained in such regulations is delayed, such modified standards or such delay (or both, as the case may be) shall apply, for an interim period, in lieu of the standard or effective date otherwise applicable under subsection (a), (b), (c), or (d) to any vehicles covered by such modified standard or delayed effective date. The interim period shall be a period of not more than 2 model years from the effective date otherwise applicable under subsection (a), (b), (c), or (d). After such interim period, the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) shall take effect with respect to such vehicles (unless subsequently replaced under subsection (e)).

**(g) Not applicable to heavy-duty vehicles**

Notwithstanding any provision of the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board nothing in this section shall apply to heavy-duty engines in vehicles of more than 8,500 lbs. GVWR.

**CREDIT(S)**

(July 14, 1955, c. 360, Title II, § 243, as added [Pub.L. 101-549, Title II, § 229\(a\)](#), Nov. 15, 1990, 104 Stat. 2514.)

**Footnotes**

<sup>1</sup> So in original. Probably should be “subsection”.

<sup>2</sup> So in original. Probably should be “subsections”.

42 U.S.C.A. § 7583, 42 USCA § 7583

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

United States Code Annotated  
 Title 42. The Public Health and Welfare  
 Chapter 85. Air Pollution Prevention and Control (Refs & Annos)  
 Subchapter II. Emission Standards for Moving Sources  
 Part C. Clean Fuel Vehicles (Refs & Annos)

42 U.S.C.A. § 7584

§ 7584. Administration and enforcement as per California standards

Currentness

Where the numerical clean-fuel vehicle standards applicable under this part to vehicles of not more than 8,500 lbs. GVWR are the same as numerical emission standards applicable in California under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (“CARB”), such standards shall be administered and enforced by the Administrator--

(1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards applicable under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (“CARB”); and

(2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance,

unless the Administrator determines (in promulgating the rules establishing the clean fuel vehicle program under this section) that any such administration and enforcement would not meet the criteria for a waiver under [section 7543](#) of this title. Nothing in this section shall apply in the case of standards under [section 7585](#) of this title for heavy-duty vehicles.

**CREDIT(S)**

(July 14, 1955, c. 360, Title II, § 244, as added [Pub.L. 101-549, Title II, § 229\(a\)](#), Nov. 15, 1990, 104 Stat. 2519.)

42 U.S.C.A. § 7584, 42 USCA § 7584

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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## United States Code Annotated

## Title 42. The Public Health and Welfare

## Chapter 85. Air Pollution Prevention and Control (Refs &amp; Annos)

## Subchapter II. Emission Standards for Moving Sources

## Part C. Clean Fuel Vehicles (Refs &amp; Annos)

## 42 U.S.C.A. § 7586

## § 7586. Centrally fueled fleets

## Currentness

**(a) Fleet program required for certain nonattainment areas****(1) SIP revision**

Each State in which there is located all or part of a covered area (as defined in paragraph (2)) shall submit, within 42 months after November 15, 1990, a State implementation plan revision under [section 7410](#) of this title and part D of subchapter I to establish a clean-fuel vehicle program for fleets under this section.

**(2) Covered areas**

For purposes of this subsection, each of the following shall be a “covered area”:

**(A) Ozone nonattainment areas**

Any ozone nonattainment area with a 1980 population of 250,000 or more classified under subpart 2 of part D of subchapter I of this chapter as Serious, Severe, or Extreme based on data for the calendar years 1987, 1988, and 1989. In determining the ozone nonattainment areas to be treated as covered areas pursuant to this subparagraph, the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to November 15, 1990.

**(B) Carbon monoxide nonattainment areas**

Any carbon monoxide nonattainment area with a 1980 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989 (as calculated according to the most recent interpretation methodology issued prior to November 15, 1990, by the United States Environmental Protection Agency), excluding those carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedances.

**(3) Plan revisions for reclassified areas**

In the case of ozone nonattainment areas reclassified as Serious, Severe, or Extreme under part D of subchapter I with a 1980 population of 250,000 or more, the State shall submit a plan revision meeting the requirements of this subsection within 1 year after reclassification. Such plan revision shall implement the requirements applicable under this subsection at the time

of reclassification and thereafter, except that the Administrator may adjust for a limited period the deadlines for compliance where compliance with such deadlines would be infeasible.

#### **(4) Consultation; consideration of factors**

Each State required to submit an implementation plan revision under this subsection shall develop such revision in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment and other relevant factors.

#### **(b) Phase-in of requirements**

The plan revision required under this section shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area. For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table:

Clean Fuel Vehicle Phase-In Requirements for Fleets

| Vehicle Type                                 | MY1998 | MY1999 | MY2000 |
|--|--------|--------|--------|
| Light-duty trucks up to 6,000 lbs.           |        |        |        |
| GVWR and light-duty vehicles.....            | 30%    | 50%    | 70%    |
| Heavy-duty trucks above 8,500 lbs. GVWR..... | 50%    | 50%    | 50%    |

The term MY refers to model year.

#### **(c) Accelerated standard for light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles**

Notwithstanding the model years for which clean-fuel vehicle standards are applicable as provided in [section 7583](#) of this title, for purposes of this section, light duty<sup>1</sup> trucks of up to 6,000 lbs. GVWR and light-duty vehicles manufactured in model years 1998 through model year 2000 shall be treated as clean-fuel vehicles only if such vehicles comply with the standards applicable under [section 7583](#) of this title for vehicles in the same class for the model year 2001. The requirements of subsection (b) shall take effect on the earlier of the following:

**(1)** The first model year after model year 1997 in which new light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles which comply with the model year 2001 standards under [section 7583](#) of this title are offered for sale in California.

**(2)** Model year 2001.

Whenever the effective date of subsection (b) is delayed pursuant to paragraph (1) of this subsection, the phase-in schedule under subsection (b) shall be modified to commence with the model year referred to in paragraph (1) in lieu of model year 1998.

**(d) Choice of vehicles and fuel**

The plan revision under this subsection shall provide that the choice of clean-fuel vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this subsection.

**(e) Availability of clean alternative fuel**

The plan revision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

**(f) Credits****(1) Issuance of credits**

The State plan revision required under this section shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

(A) The purchase of more clean-fuel vehicles than required under this section.

(B) The purchase of clean fuel<sup>2</sup> vehicles which meet more stringent standards established by the Administrator pursuant to paragraph (4).

(C) The purchase of vehicles in categories which are not covered by this section but which meet standards established for such vehicles under paragraph (4).

**(2) Use of credits; limitations based on weight classes****(A) Use of credits**

Credits under this subsection may be used by the person holding such credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, such credits shall maintain the same value as if used at an earlier date.

**(B) Limitations based on weight classes**

Credits issued with respect to the purchase of vehicles of up to 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 lbs. GVWR. Credits issued with respect to the purchase of vehicles of more than 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 lbs. GVWR.

**(C) Weighting**

Credits issued for purchase of a clean fuel<sup>2</sup> vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

**(3) Regulations and administration**

Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program. The State shall administer the credit program established under this subsection.

**(4) Standards for issuing credits for cleaner vehicles**

Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for Ultra-Low Emission Vehicles (“ULEV”s) and Zero Emissions Vehicles (“ZEV”s) which shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part. The Administrator shall certify clean fuel<sup>2</sup> vehicles as complying with such more stringent standards, and administer and enforce such more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section. The standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

**(5) Early fleet credits**

The State plan revision shall provide credits under this subsection to fleet operators that purchase vehicles certified to meet clean-fuel vehicle standards under this part during any period after approval of the plan revision and prior to the effective date of the fleet program under this section.

**(g) Availability to public**

At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, such fuel shall be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of such Federal facilities.

**(h) Transportation control measures**

The Administrator shall by rule, within 1 year after November 15, 1990, ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding subchapter I.

**CREDIT(S)**

(July 14, 1955, c. 360, Title II, § 246, as added Pub.L. 101-549, Title II, § 229(a), Nov. 15, 1990, 104 Stat. 2520.)

### Footnotes

<sup>1</sup> So in original. Probably should be “light-duty”.

<sup>2</sup> So in original. Probably should be “clean-fuel”.

42 U.S.C.A. § 7586, 42 USCA § 7586

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated  
Title 42. The Public Health and Welfare  
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)  
Subchapter III. General Provisions

42 U.S.C.A. § 7607

§ 7607. Administrative proceedings and judicial review

Currentness

**(a) Administrative subpoenas; confidentiality; witnesses**

In connection with any determination under [section 7410\(f\)](#) of this title, or for purposes of obtaining information under [section 7521\(b\)\(4\)](#)<sup>1</sup> or [7545\(c\)\(3\)](#) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the<sup>2</sup> chapter (including but not limited to [section 7413](#), [section 7414](#), [section 7420](#), [section 7429](#), [section 7477](#), [section 7524](#), [section 7525](#), [section 7542](#), [section 7603](#), or [section 7606](#) of this title),<sup>3</sup> the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of [section 1905 of Title 18](#), except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in [section 7521\(c\)](#) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subparagraph<sup>4</sup>, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(b) Judicial review**

**(1)** A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under [section 7412](#) of this title, any standard of performance or requirement under [section 7411](#) of this title,<sup>3</sup> any standard under [section 7521](#) of this title (other than a standard required to be prescribed under [section 7521\(b\)\(1\)](#) of this title), any determination under [section 7521\(b\)\(5\)](#)<sup>1</sup> of this title, any control or prohibition under [section 7545](#) of this title, any standard under [section 7571](#) of this title, any rule issued under [section 7413](#), [7419](#), or under [section 7420](#) of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under [section 7410](#) of this title or [section 7411\(d\)](#) of this title, any order under [section 7411\(j\)](#) of this title, under [section 7412](#) of this title, under [section 7419](#) of this title, or under [section 7420](#) of this title, or his action under [section 1857c-10\(c\)\(2\)\(A\), \(B\), or \(C\)](#) of this title (as in effect before



August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under [section 7414\(a\)\(3\)](#) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

**(c) Additional evidence**

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to <sup>5</sup> the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

**(d) Rulemaking**

(1) This subsection applies to--

(A) the promulgation or revision of any national ambient air quality standard under [section 7409](#) of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under [section 7410\(c\)](#) of this title,

(C) the promulgation or revision of any standard of performance under [section 7411](#) of this title, or emission standard or limitation under [section 7412\(d\)](#) of this title, any standard under [section 7412\(f\)](#) of this title, or any regulation under [section 7412\(g\)\(1\)\(D\) and \(F\)](#) of this title, or any regulation under [section 7412\(m\)](#) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under [section 7429](#) of this title,

- (E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under [section 7545](#) of this title,
- (F) the promulgation or revision of any aircraft emission standard under [section 7571](#) of this title,
- (G) the promulgation or revision of any regulation under subchapter IV-A (relating to control of acid deposition),
- (H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under [section 7419](#) of this title (but not including the granting or denying of any such order),
- (I) promulgation or revision of regulations under subchapter VI of (relating to stratosphere and ozone protection),
- (J) promulgation or revision of regulations under part C of subchapter I (relating to prevention of significant deterioration of air quality and protection of visibility),
- (K) promulgation or revision of regulations under [section 7521](#) of this title and test procedures for new motor vehicles or engines under [section 7525](#) of this title, and the revision of a standard under [section 7521\(a\)\(3\)](#) of this title,
- (L) promulgation or revision of regulations for noncompliance penalties under [section 7420](#) of this title,
- (M) promulgation or revision of any regulations promulgated under [section 7541](#) of this title (relating to warranties and compliance by vehicles in actual use),
- (N) action of the Administrator under [section 7426](#) of this title (relating to interstate pollution abatement),
- (O) the promulgation or revision of any regulation pertaining to consumer and commercial products under [section 7511b\(e\)](#) of this title,
- (P) the promulgation or revision of any regulation pertaining to field citations under [section 7413\(d\)\(3\)](#) of this title,
- (Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II,
- (R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under [section 7547](#) of this title,
- (S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under [section 7552](#) of this title,

(T) the promulgation or revision of any regulation under subchapter IV-A (relating to acid deposition),

(U) the promulgation or revision of any regulation under [section 7511b\(f\)](#) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of [section 553](#) through [557](#) and [section 706 of Title 5](#) shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of Title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a “rule”). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under [section 553\(b\) of Title 5](#), shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the “comment period”). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of--

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under [section 7409\(d\)](#) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed

such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged

procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

**(e) Other methods of judicial review not authorized**

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

**(f) Costs**

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

**(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties**

In any action respecting the promulgation of regulations under [section 7420](#) of this title or the administration or enforcement of [section 7420](#) of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

**(h) Public participation**

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of Title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section <sup>6</sup> 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

#### CREDIT(S)

(July 14, 1955, c. 360, Title III, § 307, as added Pub.L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub.L. 92-157, Title III, § 302(a), Nov. 18, 1971, 85 Stat. 464; Pub.L. 93-319, § 6(c), June 22, 1974, 88 Stat. 259; Pub.L. 95-95, Title III, §§ 303(d), 305(a), (c), (f) to (h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub.L. 95-190, § 14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub.L. 101-549, Title I, §§ 108(p), 110(5), Title III, § 302(g), (h), Title VII, §§ 702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681-2684.)

#### Footnotes

- 1 Repealed. See References in Text notes set out under this section.
- 2 So in original. Probably should be “this”.
- 3 So in original.
- 4 So in original. Probably should be “subsection,”.
- 5 So in original. The word “to” probably should not appear.
- 6 So in original. Probably should be “sections”.

42 U.S.C.A. § 7607, 42 USCA § 7607

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

United States Code Annotated  
Title 42. The Public Health and Welfare  
Chapter 134. Energy Policy  
Subchapter I. Alternative Fuels--General

42 U.S.C.A. § 13212

§ 13212. Minimum Federal fleet requirement

Effective: December 20, 2007

[Currentness](#)

**(a) General requirements**

(1) The Federal Government shall acquire at least--

(A) 5,000 light duty alternative fueled vehicles in fiscal year 1993;

(B) 7,500 light duty alternative fueled vehicles in fiscal year 1994; and

(C) 10,000 light duty alternative fueled vehicles in fiscal year 1995.

(2) The Secretary shall allocate the acquisitions necessary to meet the requirements under paragraph (1).

**(b) Percentage requirements**

(1) Of the total number of vehicles acquired by a Federal fleet, at least--

(A) 25 percent in fiscal year 1996;

(B) 33 percent in fiscal year 1997;

(C) 50 percent in fiscal year 1998; and

(D) 75 percent in fiscal year 1999 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary, in consultation with the Administrator of General Services where appropriate, may permit a Federal fleet to acquire a smaller percentage than is required in paragraph (1), so long as the aggregate percentage acquired by all Federal fleets is at least equal to the required percentage.

(3) For purposes of this subsection, the term “Federal fleet” means 20 or more light duty motor vehicles, located in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by or assigned to any Federal executive department, military department, Government corporation, independent establishment, or executive agency, the United States Postal Service, the Congress, the courts of the United States, or the Executive Office of the President. Such term does not include--

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(C) law enforcement vehicles;

(D) emergency vehicles;

(E) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons; or

(F) nonroad vehicles, including farm and construction vehicles.

**(c) Allocation of incremental costs**

The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies shall allocate the incremental cost of alternative fueled vehicles over the cost of comparable gasoline vehicles across the entire fleet of motor vehicles distributed by such agency.

**(d) Application of requirements**

The provisions of [section 6374](#) of this title relating to the Federal acquisition of alternative fueled vehicles shall apply to the acquisition of vehicles pursuant to this section.

**(e) Resale**

The Administrator of General Services shall take all feasible steps to ensure that all alternative fueled vehicles sold by the Federal Government shall remain alternative fueled vehicles at time of sale.

**(f) Vehicle emission requirements**



## **(1) Definitions**

In this subsection:

### **(A) Federal agency**

The term “Federal agency” does not include any office of the legislative branch, except that it does include the House of Representatives with respect to an acquisition described in paragraph (2)(C).

### **(B) Medium duty passenger vehicle**

The term “medium duty passenger vehicle” has the meaning given that term <sup>1</sup> [section 523.2 of title 49 of the Code of Federal Regulations](#), as in effect on December 19, 2007.

### **(C) Member's Representational Allowance**

The term “Member's Representational Allowance” means the allowance described in [section 5341\(a\) of Title 2](#).

## **(2) Prohibition**

### **(A) In general**

Except as provided in subparagraph (B), no Federal agency shall acquire a light duty motor vehicle or medium duty passenger vehicle that is not a low greenhouse gas emitting vehicle.

### **(B) Exception**

The prohibition in subparagraph (A) shall not apply to acquisition of a vehicle if the head of the agency certifies in writing, in a separate certification for each individual vehicle purchased, either--

(i) that no low greenhouse gas emitting vehicle is available to meet the functional needs of the agency and details in writing the functional needs that could not be met with a low greenhouse gas emitting vehicle; or

(ii) that the agency has taken specific alternative more cost-effective measures to reduce petroleum consumption that--

(I) have reduced a measured and verified quantity of greenhouse gas emissions equal to or greater than the quantity of greenhouse gas reductions that would have been achieved through acquisition of a low greenhouse gas emitting vehicle over the lifetime of the vehicle; or

(II) will reduce each year a measured and verified quantity of greenhouse gas emissions equal to or greater than the quantity of greenhouse gas reductions that would have been achieved each year through acquisition of a low greenhouse gas emitting vehicle.

**(C) Special rule for vehicles provided by funds contained in Members' Representational Allowance**

This paragraph shall apply to the acquisition of a light duty motor vehicle or medium duty passenger vehicle using any portion of a Member's Representational Allowance, including an acquisition under a long-term lease.

**(3) Guidance**

**(A) In general**

Each year, the Administrator of the Environmental Protection Agency shall issue guidance identifying the makes and model numbers of vehicles that are low greenhouse gas emitting vehicles.

**(B) Consideration**

In identifying vehicles under subparagraph (A), the Administrator shall take into account the most stringent standards for vehicle greenhouse gas emissions applicable to and enforceable against motor vehicle manufacturers for vehicles sold anywhere in the United States.

**(C) Requirement**

The Administrator shall not identify any vehicle as a low greenhouse gas emitting vehicle if the vehicle emits greenhouse gases at a higher rate than such standards allow for the manufacturer's fleet average grams per mile of carbon dioxide-equivalent emissions for that class of vehicle, taking into account any emissions allowances and adjustment factors such standards provide.

**(g) Authorization of appropriations**

There are authorized to be appropriated for carrying out this section, such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

**CREDIT(S)**

(Pub.L. 102-486, Title III, § 303, Oct. 24, 1992, 106 Stat. 2871; Pub.L. 109-58, Title VII, § 702, Aug. 8, 2005, 119 Stat. 815; Pub.L. 110-140, Title I, § 141, Dec. 19, 2007, 121 Stat. 1517.)

### Footnotes

<sup>1</sup> So in original. The word “in” probably should appear after “term”.

42 U.S.C.A. § 13212, 42 USCA § 13212

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated  
Title 49. Transportation (Refs & Annos)  
Subtitle VI. Motor Vehicle and Driver Programs  
Part B. Commercial  
Chapter 311. Commercial Motor Vehicle Safety  
Subchapter II. Length and Width Limitations (Refs & Annos)

49 U.S.C.A. § 31112

§ 31112. Property-carrying unit limitation

Effective: February 15, 2019

[Currentness](#)

**(a) Definitions.**--In this section--

(1) “property-carrying unit” means any part of a commercial motor vehicle combination (except the truck tractor) used to carry property, including a trailer, a semitrailer, or the property-carrying section of a single unit truck, but not including a trailer or a semitrailer transported as part of a towaway trailer transporter combination (as defined in [section 31111\(a\)](#)).

(2) the length of the property-carrying units of a commercial motor vehicle combination is the length measured from the front of the first property-carrying unit to the rear of the last property-carrying unit.

**(b) General limitations.**--A State may not allow by any means the operation, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under [section 31111\(e\)](#) of this title, of any commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special permit under applicable State law) with more than one property-carrying unit (not including the truck tractor) whose property-carrying units are more than--

(1) the maximum combination trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State before June 2, 1991; or

(2) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual, lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State before June 2, 1991.

**(c) Special rules for Wyoming, Ohio, Alaska, Iowa, Nebraska, Kansas, and Oregon.**--In addition to the vehicles allowed under subsection (b) of this section--

(1) Wyoming may allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, but authorized by State law not later than November 3, 1992, if the vehicle configurations comply with the single axle, tandem axle, and bridge formula limits in [section 127\(a\) of title 23](#) and are not more than 117,000 pounds gross vehicle weight;

(2) Ohio may allow the operation of commercial motor vehicle combinations with 3 property-carrying units of 28.5 feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated in Ohio on the 1-mile segment of Ohio State Route 7 that begins at and is south of exit 16 of the Ohio Turnpike;

(3) Alaska may allow the operation of commercial motor vehicle combinations that were not in actual operation on June 1, 1991, but were in actual operation before July 6, 1991;

(4) Iowa may allow the operation on Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or on Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska of commercial motor vehicle combinations with trailer length, semitrailer length, and property-carrying unit length allowed by law or regulation and in actual lawful operation on a regular or periodic basis (including continued seasonal operation) in South Dakota or Nebraska, respectively, before June 2, 1991;

(5) Nebraska and Kansas may allow the operation of a truck tractor and 2 trailers or semitrailers not in actual lawful operation on a regular or periodic basis on June 1, 1991, if the length of the property-carrying units does not exceed 81 feet 6 inches and such combination is used only to transport equipment utilized by custom harvesters under contract to agricultural producers to harvest one or more of wheat, soybeans, and milo during the harvest months for such crops, as defined by the relevant state;<sup>1</sup> and

(6) Oregon may allow the operation of a truck tractor and 2 property-carrying units not in actual lawful operation on a regular or periodic basis on June 1, 1991, if--

(A) the length of the property-carrying units does not exceed 82 feet 8 inches;

(B) the combination is used only to transport sugar beets; and

(C) the operation occurs on United States Route 20, United States Route 26, United States Route 30, or Oregon Route 201 in the vicinity, or between any, of--

(i) Vale, Oregon;

(ii) Ontario, Oregon; or

(iii) Nyssa, Oregon.

**(d) Additional limitations.--(1)** A commercial motor vehicle combination whose operation in a State is not prohibited under subsections (b) and (c) of this section may continue to operate in the State on highways described in subsection (b) only if at least in compliance with all State laws, regulations, limitations, and conditions, including routing-specific and configuration-specific designations and all other restrictions in force in the State on June 1, 1991. However, subject to regulations prescribed by the

Secretary under subsection (g)(2) of this section, the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 1991, for specific safety purposes and road construction.

(2) This section does not prevent a State from further restricting in any way or prohibiting the operation of any commercial motor vehicle combination subject to this section, except that a restriction or prohibition shall be consistent with this section and [sections 31113\(a\) and \(b\) and 31114](#) of this title.

(3) A State making a minor adjustment of a temporary and emergency nature as authorized by paragraph (1) of this subsection or further restricting or prohibiting the operation of a commercial motor vehicle combination as authorized by paragraph (2) of this subsection shall advise the Secretary not later than 30 days after the action. The Secretary shall publish a notice of the action in the Federal Register.

(4) Nebraska may continue to allow to be operated under paragraphs (b)(1) and (b)(2) of this section,<sup>2</sup> the State of Nebraska may allow longer combination vehicles that were not in actual operation on June 1, 1991 to be operated within its boundaries to transport sugar beets from the field where such sugar beets are harvested to storage, market, factory or stockpile or from stockpile to storage, market or factory. This provision shall expire on February 28, 1998.

**(e) List of State length limitations.**—(1) Not later than February 16, 1992, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in subsection (b) of this section. The list shall indicate the applicable State laws and regulations associated with the length limitations. If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

(2) Not later than March 17, 1992, the Secretary shall publish an interim list in the Federal Register consisting of all information submitted under paragraph (1) of this subsection. The Secretary shall review for accuracy all information submitted by a State under paragraph (1) and shall solicit and consider public comment on the accuracy of the information.

(3) A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, by permit or otherwise, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis before June 2, 1991.

(4) Except as revised under this paragraph or paragraph (5) of this subsection, the list shall be published as final in the Federal Register not later than June 15, 1992. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under paragraph (2) of this subsection. After publication of the final list, commercial motor vehicle combinations prohibited under subsection (b) of this section may not operate on the Dwight D. Eisenhower System of Interstate and Defense Highways and other Federal-aid Primary System highways designated by the Secretary except as published on the list. The list may be combined by the Secretary with the list required under [section 127\(d\) of title 23](#).

(5) On the Secretary's own motion or on request by any person (including a State), the Secretary shall review the list published under paragraph (4) of this subsection. If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.

**(f) Limitations on statutory construction.**--This section may not be construed--

(1) to allow the operation on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways of a longer combination vehicle prohibited under [section 127\(d\) of title 23](#);

(2) to affect in any way the operation of a commercial motor vehicle having only one property-carrying unit; or

(3) to affect in any way the operation in a State of a commercial motor vehicle with more than one property-carrying unit if the vehicle was in actual operation on a regular or periodic basis (including seasonal operation) in that State before June 2, 1991, that was authorized under State law or regulation or lawful State permit.

**(g) Regulations.**--(1) In carrying out this section only, the Secretary shall define by regulation loads that cannot be dismantled easily or divided easily.

(2) Not later than June 15, 1992, the Secretary shall prescribe regulations establishing criteria for a State to follow in making minor adjustments under subsection (d) of this section.

**CREDIT(S)**

(Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 995; [Pub.L. 104-59, Title III, § 312\(a\)\(3\)](#), Nov. 28, 1995, 109 Stat. 584; [Pub.L. 104-205, Title III, § 352](#), Sept. 30, 1996, 110 Stat. 2980; [Pub.L. 105-66, Title III, § 343](#), Oct. 27, 1997, 111 Stat. 1449; [Pub.L. 109-59, Title IV, § 4112](#), Aug. 10, 2005, 119 Stat. 1724; [Pub.L. 114-94, Div. A, Title V, § 5523\(c\)\(1\)](#), Dec. 4, 2015, 129 Stat. 1560; [Pub.L. 114-113, Div. L, Title I, § 137](#), Dec. 18, 2015, 129 Stat. 2851; [Pub.L. 116-6, Div. G, Title IV, § 423](#), Feb. 15, 2019, 133 Stat. 474.)


**Footnotes**

<sup>1</sup> So in original. Probably should be capitalized.

<sup>2</sup> So in original.

49 U.S.C.A. § 31112, 49 USCA § 31112

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated  
Title 49. Transportation (Refs & Annos)  
Subtitle VI. Motor Vehicle and Driver Programs  
Part C. Information, Standards, and Requirements (Refs & Annos)  
Chapter 329. Automobile Fuel Economy (Refs & Annos)

49 U.S.C.A. § 32902

§ 32902. Average fuel economy standards

Effective: December 20, 2007

[Currentness](#)

**(a) Prescription of standards by regulation.**--At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.

**(b) Standards for automobiles and certain other vehicles.--**

**(1) In general.**--The Secretary of Transportation, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall prescribe separate average fuel economy standards for--

**(A)** passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection;

**(B)** non-passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection; and

**(C)** work trucks and commercial medium-duty or heavy-duty on-highway vehicles in accordance with subsection (k).

**(2) Fuel economy standards for automobiles.--**

**(A) Automobile fuel economy average for model years 2011 through 2020.**--The Secretary shall prescribe a separate average fuel economy standard for passenger automobiles and a separate average fuel economy standard for non-passenger automobiles for each model year beginning with model year 2011 to achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet of passenger and non-passenger automobiles manufactured for sale in the United States for that model year.



**(B) Automobile fuel economy average for model years 2021 through 2030.**--For model years 2021 through 2030, the average fuel economy required to be attained by each fleet of passenger and non-passenger automobiles manufactured for sale in the United States shall be the maximum feasible average fuel economy standard for each fleet for that model year.

**(C) Progress toward standard required.**--In prescribing average fuel economy standards under subparagraph (A), the Secretary shall prescribe annual fuel economy standard increases that increase the applicable average fuel economy standard ratably beginning with model year 2011 and ending with model year 2020.

**(3) Authority of the Secretary.**--The Secretary shall--

**(A)** prescribe by regulation separate average fuel economy standards for passenger and non-passenger automobiles based on 1 or more vehicle attributes related to fuel economy and express each standard in the form of a mathematical function; and

**(B)** issue regulations under this title prescribing average fuel economy standards for at least 1, but not more than 5, model years.

**(4) Minimum standard.**--In addition to any standard prescribed pursuant to paragraph (3), each manufacturer shall also meet the minimum standard for domestically manufactured passenger automobiles, which shall be the greater of--

**(A)** 27.5 miles per gallon; or

**(B)** 92 percent of the average fuel economy projected by the Secretary for the combined domestic and non-domestic passenger automobile fleets manufactured for sale in the United States by all manufacturers in the model year, which projection shall be published in the Federal Register when the standard for that model year is promulgated in accordance with this section.

**(c) Amending passenger automobile standards.**--The Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. [Section 553 of title 5](#) applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.

**(d) Exemptions.**--**(1)** Except as provided in paragraph (3) of this subsection, on application of a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary--

**(A)** finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

- (B) prescribes by regulation an alternative average fuel economy standard for the passenger automobiles manufactured by the exempted manufacturer that the Secretary decides is the maximum feasible average fuel economy level for the manufacturers to which the alternative standard applies.
- (2) An alternative average fuel economy standard the Secretary of Transportation prescribes under paragraph (1)(B) of this subsection may apply to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of passenger automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.
- (3) Notwithstanding paragraph (1) of this subsection, an importer registered under [section 30141\(c\)](#) of this title may not be exempted as a manufacturer under paragraph (1) for a motor vehicle that the importer--
- (A) imports; or
- (B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an individual under [section 30142](#) of this title.
- (4) The Secretary of Transportation may prescribe the contents of an application for an exemption.
- (e) **Emergency vehicles.**--(1) In this subsection, “emergency vehicle” means an automobile manufactured primarily for use--
- (A) as an ambulance or combination ambulance-hearse;
- (B) by the United States Government or a State or local government for law enforcement; or
- (C) for other emergency uses prescribed by regulation by the Secretary of Transportation.
- (2) A manufacturer may elect to have the fuel economy of an emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.
- (f) **Considerations on decisions on maximum feasible average fuel economy.**--When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.
- (g) **Requirements for other amendments.**--(1) The Secretary of Transportation may prescribe regulations amending an average fuel economy standard prescribed under subsection (a) or (d) of this section if the amended standard meets the requirements of subsection (a) or (d), as appropriate.

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment (and submit the amendment to Congress when required under subsection (c)(2) of this section) at least 18 months before the beginning of the model year to which the amendment applies.

**(h) Limitations.**--In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation--

(1) may not consider the fuel economy of dedicated automobiles;

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel; and

(3) may not consider, when prescribing a fuel economy standard, the trading, transferring, or availability of credits under [section 32903](#).

**(i) Consultation.**--The Secretary of Transportation shall consult with the Secretary of Energy in carrying out this section and [section 32903](#) of this title.

**(j) Secretary of Energy comments.**--(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a), (c), or (g) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and provide the Secretary of Energy a reasonable time to comment.

**(k) Commercial medium- and heavy-duty on-highway vehicles and work trucks.**--

**(1) Study.**--Not later than 1 year after the National Academy of Sciences publishes the results of its study under section 108 of the Ten-in-Ten Fuel Economy Act, the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall examine the fuel efficiency of commercial medium- and heavy-duty on-highway vehicles and work trucks and determine--

(A) the appropriate test procedures and methodologies for measuring the fuel efficiency of such vehicles and work trucks;

(B) the appropriate metric for measuring and expressing commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency performance, taking into consideration, among other things, the work performed by such on-highway vehicles and work trucks and types of operations in which they are used;

(C) the range of factors, including, without limitation, design, functionality, use, duty cycle, infrastructure, and total overall energy consumption and operating costs that affect commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency; and

(D) such other factors and conditions that could have an impact on a program to improve commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency.

**(2) Rulemaking.**--Not later than 24 months after completion of the study required under paragraph (1), the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, by regulation, shall determine in a rulemaking proceeding how to implement a commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement, and shall adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks. The Secretary may prescribe separate standards for different classes of vehicles under this subsection.

**(3) Lead-time; regulatory stability.**--The commercial medium- and heavy-duty on-highway vehicle and work truck fuel economy standard adopted pursuant to this subsection shall provide not less than--

(A) 4 full model years of regulatory lead-time; and

(B) 3 full model years of regulatory stability.

#### CREDIT(S)

(Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1059; Pub.L. 110-140, Title I, §§ 102, 104(b)(1), Dec. 19, 2007, 121 Stat. 1498, 1503.)

#### MEMORANDA OF PRESIDENT

#### PRESIDENTIAL MEMORANDUM

<Jan. 26, 2009, 74 F.R. 4907>

#### The Energy Independence and Security Act of 2007

Memorandum for the Secretary of Transportation [and] the Administrator of the National Highway Traffic Safety Administration

In 2007, the Congress passed the Energy Independence and Security Act (EISA). This law mandates that, as part of the Nation's efforts to achieve energy independence, the Secretary of Transportation prescribe annual fuel economy increases for automobiles, beginning with model year 2011, resulting in a combined fuel economy fleet average of at least 35 miles per gallon by model year 2020. On May 2, 2008, the National Highway Traffic Safety Administration (NHTSA) published a Notice of Proposed Rulemaking entitled *Average Fuel Economy Standards, Passenger Cars and Light Trucks; Model Years 2011-2015*,

73 Fed. Reg. 24352. In the notice and comment period, the NHTSA received numerous comments, some of them contending that certain aspects of the proposed rule, including appendices providing for preemption of State laws, were inconsistent with provisions of EISA and the Supreme Court's decision in *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

Federal law requires that the final rule regarding fuel economy standards be adopted at least 18 months before the beginning of the model year (49 U.S.C. 32902(g)(2)). In order for the model year 2011 standards to meet this requirement, the NHTSA must publish the final rule in the Federal Register by March 30, 2009. To date, the NHTSA has not published a final rule.

Therefore, I request that:

(a) in order to comply with the EISA requirement that fuel economy increases begin with model year 2011, you take all measures consistent with law, and in coordination with the Environmental Protection Agency, to publish in the Federal Register by March 30, 2009, a final rule prescribing increased fuel economy for model year 2011;

(b) before promulgating a final rule concerning model years after model year 2011, you consider the appropriate legal factors under the EISA, the comments filed in response to the Notice of Proposed Rulemaking, the relevant technological and scientific considerations, and to the extent feasible, the forthcoming report by the National Academy of Sciences mandated under section 107 of EISA; and

(c) in adopting the final rules in paragraphs (a) and (b) above, you consider whether any provisions regarding preemption are consistent with the EISA, the Supreme Court's decision in *Massachusetts v. EPA* and other relevant provisions of law and the policies underlying them.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA

#### MEMORANDA OF PRESIDENT

#### PRESIDENTIAL MEMORANDUM

<May 21, 2010, 75 F.R. 29399>

#### **Improving Energy Security, American Competitiveness and Job Creation, and Environmental Protection Through a Transformation of Our Nation's Fleet of Cars And Trucks**

Memorandum for the Secretary of Transportation[,], the Secretary of Energy[,], the Administrator of the Environmental Protection Agency[, and] the Administrator of the National Highway Traffic Safety Administration

America has the opportunity to lead the world in the development of a new generation of clean cars and trucks through innovative technologies and manufacturing that will spur economic growth and create high-quality domestic jobs, enhance our energy security, and improve our environment. We already have made significant strides toward reducing greenhouse gas pollution and enhancing fuel efficiency from motor vehicles with the joint rulemaking issued by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) on April 1, 2010, which regulates these attributes

of passenger cars and light-duty trucks for model years 2012-2016. In this memorandum, I request that additional coordinated steps be taken to produce a new generation of clean vehicles.

### **Section 1. Medium- and Heavy-Duty Trucks.**

While the Federal Government and many States have now created a harmonized framework for addressing the fuel economy of and greenhouse gas emissions from cars and light-duty trucks, medium-and heavy-duty trucks and buses continue to be a major source of fossil fuel consumption and greenhouse gas pollution. I therefore request that the Administrators of the EPA and the NHTSA immediately begin work on a joint rulemaking under the Clean Air Act (CAA) and the Energy Independence and Security Act of 2007 (EISA) to establish fuel efficiency and greenhouse gas emissions standards for commercial medium-and heavy-duty vehicles beginning with model year 2014, with the aim of issuing a final rule by July 30, 2011. As part of this rule development process, I request that the Administrators of the EPA and the NHTSA:

- (a) Propose and take comment on strategies, including those designed to increase the use of existing technologies, to achieve substantial annual progress in reducing transportation sector emissions and fossil fuel consumption consistent with my Administration's overall energy and climate security goals. These strategies should consider whether particular segments of the diverse heavy-duty vehicle sector present special opportunities to reduce greenhouse gas emissions and increase fuel economy. For example, preliminary estimates indicate that large tractor trailers, representing half of all greenhouse gas emissions from this sector, can reduce greenhouse gas emissions by as much as 20 percent and increase their fuel efficiency by as much as 25 percent with the use of existing technologies;
- (b) Include fuel efficiency and greenhouse gas emissions standards that take into account the market structure of the trucking industry and the unique demands of heavy-duty vehicle applications; seek harmonization with applicable State standards; consider the findings and recommendations published in the National Academy of Science report on medium-and heavy-duty truck regulation; strengthen the industry and enhance job creation in the United States; and
- (c) Seek input from all stakeholders, while recognizing the continued leadership role of California and other States.

### **Sec. 2. Passenger Cars and Light-Duty Trucks.**

Building on the earlier joint rulemaking, and in order to provide greater certainty and incentives for long-term innovation by automobile and light-duty vehicle manufacturers, I request that the Administrators of the EPA and the NHTSA develop, through notice and comment rulemaking, a coordinated national program under the CAA and the EISA to improve fuel efficiency and to reduce greenhouse gas emissions of passenger cars and light-duty trucks of model years 2017-2025. The national program should seek to produce joint Federal standards that are harmonized with applicable State standards, with the goal of ensuring that automobile manufacturers will be able to build a single, light-duty national fleet. The program should also seek to achieve substantial annual progress in reducing transportation sector greenhouse gas emissions and fossil fuel consumption, consistent with my Administration's overall energy and climate security goals, through the increased domestic production and use of existing, advanced, and emerging technologies, and should strengthen the industry and enhance job creation in the United States. As part of implementing the national program, I request that the Administrators of the EPA and the NHTSA:

- (a) Work with the State of California to develop by September 1, 2010, a technical assessment to inform the rulemaking process, reflecting input from an array of stakeholders on relevant factors, including viable technologies, costs, benefits, lead time to develop and deploy new and emerging technologies, incentives and other flexibilities to encourage development and deployment of new and emerging technologies, impacts on jobs and the automotive manufacturing base in the United States, and infrastructure for advanced vehicle technologies; and
- (b) Take all measures consistent with law to issue by September 30, 2010, a Notice of Intent to Issue a Proposed Rule that announces plans for setting stringent fuel economy and greenhouse gas emissions standards for light-duty vehicles of model year

2017 and beyond, including plans for initiating joint rulemaking and gathering any additional information needed to support regulatory action. The Notice should describe the key elements of the program that the EPA and the NHTSA intend jointly to propose, under their respective statutory authorities, including potential standards that could be practicably implemented nationally for the 2017-2025 model years and a schedule for setting those standards as expeditiously as possible, consistent with providing sufficient lead time to vehicle manufacturers.

### **Sec. 3. Cleaner Vehicles and Fuels and Necessary Infrastructure.**

The success of our efforts to achieve enhanced energy security and to protect the environment also depends upon the development of infrastructure and promotion of fuels, including biofuels, which will enable the development and widespread deployment of advanced technologies. Therefore, I further request that:

- (a) The Administrator of the EPA review for adequacy the current nongreenhouse gas emissions regulations for new motor vehicles, new motor vehicle engines, and motor vehicle fuels, including tailpipe emissions standards for nitrogen oxides and air toxics, and sulfur standards for gasoline. If the Administrator of the EPA finds that new emissions regulations are required, then I request that the Administrator of the EPA promulgate such regulations as part of a comprehensive approach toward regulating motor vehicles; and
- (b) The Secretary of Energy promote the deployment of advanced technology vehicles by providing technical assistance to cities preparing for deployment of electric vehicles, including plug-in hybrids and all-electric vehicles; and
- (c) The Department of Energy work with stakeholders on the development of voluntary standards to facilitate the robust deployment of advanced vehicle technologies and coordinate its efforts with the Department of Transportation, the NHTSA, and the EPA.

### **Sec. 4. General Provisions.**

- (a) This memorandum shall be implemented consistent with applicable law, including international trade obligations, and subject to the availability of appropriations.
- (b) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- (c) Nothing in this memorandum shall be construed to impair or otherwise affect:
  - (1) authority granted by law to a department, agency, or the head thereof; or
  - (2) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

### **Sec. 5. Publication.**

The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA

49 U.S.C.A. § 32902, 49 USCA § 32902

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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## Code of Federal Regulations

## Title 40. Protection of Environment

## Chapter I. Environmental Protection Agency (Refs &amp; Annos)

## Subchapter C. Air Programs

## Part 50. National Primary and Secondary Ambient Air Quality Standards (Refs &amp; Annos)

## 40 C.F.R. § 50.1

## § 50.1 Definitions.

Effective: October 3, 2016

Currentness

<Text of section amended by [81 FR 68276](#), retroactively effective Sept. 30, 2016.>

- (a) As used in this part, all terms not defined herein shall have the meaning given them by the Act.
- (b) Act means the Clean Air Act, as amended ([42 U.S.C. 1857–18571](#), as amended by [Pub.L. 91–604](#)).
- (c) Agency means the Environmental Protection Agency.
- (d) Administrator means the Administrator of the Environmental Protection Agency.
- (e) Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.
- (f) Reference method means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to this part, or a method that has been designated as a reference method in accordance with part 53 of this chapter; it does not include a method for which a reference method designation has been cancelled in accordance with [§ 53.11](#) or [§ 53.16](#) of this chapter.
- (g) Equivalent method means a method of sampling and analyzing the ambient air for an air pollutant that has been designated as an equivalent method in accordance with part 53 of this chapter; it does not include a method for which an equivalent method designation has been cancelled in accordance with [§ 53.11](#) or [§ 53.16](#) of this chapter.
- (h) Traceable means that a local standard has been compared and certified either directly or via not more than one intermediate standard, to a primary standard such as a National Bureau of Standards Standard Reference Material (NBS SRM), or a USEPA/NBS-approved Certified Reference Material (CRM).
- (i) Indian country is as defined in [18 U.S.C. 1151](#).

(j) Exceptional event means an event(s) and its resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event(s) and the monitored exceedance(s) or violation(s), is not reasonably controllable or preventable, is an event(s) caused by human activity that is unlikely to recur at a particular location or a natural event(s), and is determined by the Administrator in accordance with [40 CFR 50.14](#) to be an exceptional event. It does not include air pollution relating to source noncompliance. Stagnation of air masses and meteorological inversions do not directly cause pollutant emissions and are not exceptional events. Meteorological events involving high temperatures or lack of precipitation (i.e., severe, extreme or exceptional drought) also do not directly cause pollutant emissions and are not considered exceptional events. However, conditions involving high temperatures or lack of precipitation may promote occurrences of particular types of exceptional events, such as wildfires or high wind events, which do directly cause emissions.

(k) Natural event means an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.

(l) Exceedance with respect to a national ambient air quality standard means one occurrence of a measured or modeled concentration that exceeds the specified concentration level of such standard for the averaging period specified by the standard.

(m) Prescribed fire is any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.

(n) Wildfire is any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has developed into a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

(o) Wildland means an area in which human activity and development are essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

(p) High wind dust event is an event that includes the high-speed wind and the dust that the wind entrains and transports to a monitoring site.

(q) High wind threshold is the minimum wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event.

(r) Federal land manager means, consistent with the definition in [40 CFR 51.301](#), the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.

#### Credits

[[36 FR 22384](#), Nov. 25, 1971, as amended at [41 FR 11253](#), March 17, 1976; [48 FR 2529](#), Jan. 20, 1983; [63 FR 7274](#), Feb. 12, 1998; [72 FR 13580](#), March 22, 2007; [81 FR 68276](#), Oct. 3, 2016]

SOURCE: 36 FR 22384, Nov. 25, 1971; 50 FR 25544, June 19, 1985; 63 FR 7274, Feb. 12, 1998 unless otherwise noted., unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401, et seq.

#### Notes of Decisions (13)

Current through Jan. 12, 2023, 88 FR 2028. Some sections may be more current. See credits for details.

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# AIR QUALITY ACT OF 1967

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## REPORT OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

TOGETHER WITH ADDITIONAL VIEWS

TO ACCOMPANY

S. 780

A BILL TO AMEND THE CLEAN AIR ACT TO AUTHORIZE PLANNING GRANTS TO AIR POLLUTION CONTROL AGENCIES; EXPAND RESEARCH PROVISIONS RELATING TO FUELS AND VEHICLES; PROVIDE FOR INTERSTATE AIR POLLUTION CONTROL AGENCIES OR COMMISSIONS; AUTHORIZE THE ESTABLISHMENT OF AIR QUALITY STANDARDS, AND FOR OTHER PURPOSES



OCTOBER 3, 1967.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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90TH CONGRESS  
1st Session

HOUSE OF REPRESENTATIVES

REPORT  
No. 728

## AIR QUALITY ACT OF 1967

OCTOBER 3, 1967.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT  
together with  
ADDITIONAL VIEWS

[To accompany S. 780]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 780) to amend the Clean Air Act to authorize planning grants to air pollution control agencies; expand research provisions relating to fuels and vehicles; provide for interstate air pollution control agencies or commissions; authorize the establishment of air quality standards, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a new text, revising the Clean Air Act, which is set forth in the reported bill in *italic type*.

## PRINCIPAL PURPOSES OF THE BILL

The bill is intended primarily to pave the way for control of air pollution problems on a regional basis in accordance with air quality standards and enforcement plans developed by the States. State standards and enforcement plans would have to be consistent with air quality criteria and control technology data published by the Secretary of Health, Education, and Welfare. The Secretary would be empowered to initiate action to insure setting and enforcement of standards if a State failed to take reasonable action to achieve compliance.

In general, the bill follows the pattern of the bill as passed by the Senate, with modifications discussed hereafter.

## OTHER PROVISIONS OF THE BILL

The bill would also—

- (1) Retain the existing authority for the Secretary to take action to abate interstate and intrastate air pollution;

ADD115 1

require the utmost cooperation from States, local governments, and industry. The committee believes the Secretary's statement on this matter indicates this difficulty well, and the procedures he would follow are reasonable. The Secretary stated (hearings, p. 204) as follows:

Appropriate action in emergency situations would require detailed knowledge of the nature and location of pollution sources, immediate access to information on local meteorological conditions and air-quality levels, and detailed plans tailored to the local need to shut down or curtail pollution sources.

I will take steps, therefore, to further encourage the local and State control agencies, primarily responsible for the quality of the air in their jurisdictions, to develop appropriate air-monitoring systems and emergency procedures for curtailing sources of pollution.

Only in this way could I be assured that a decision to seek emergency court action would be based on sound technical information gathered and developed in the locality concerned.

#### MOTOR VEHICLE EMISSIONS

Public Law 89-272, enacted October 20, 1965, authorized the Secretary of Health, Education, and Welfare to establish national standards applicable to emissions from new motor vehicles and new motor vehicle engines. That legislation contains no explicit statement concerning the preemption of State laws on this subject, and no statements concerning this problem were made on either the House or the Senate floor when the bill was debated.

The report of this committee on the bill (H. Rept. 899, 89th Cong.) contains the following statement:

The committee is convinced that motor vehicle exhaust control standards on a national scale are necessary and would be of benefit to the entire country. \* \* \* While the committee is cognizant of the basic rights and responsibilities of the States for control of air pollution, it is apparent that the establishment of Federal standards applicable to motor vehicle emissions is preferable to regulation by individual States.

The report of the Senate committee on the bill (S. Rept. 192, 89th Cong.) contains the following two statements:

In view of the fact that the automobile is one of the principal sources of air pollution and manufacturers have the capability of incorporating air pollution reduction facilities in their vehicles, there is no apparent reason why the entire Nation should not benefit from such advances. Also, it would be more desirable to have national standards rather than for each State to have a variation in standards and requirements which could result in chaos insofar as manufacturers, dealers, and users are concerned (p. 6).

The committee has found that the automotive industry has the capability for limiting the emissions of hydrocarbons and carbon monoxide from both the crankcase and exhaust systems of gasoline powered motor vehicles and found a willingness to accept legislation which would establish national standards, and it is the

hope of the committee that individual States will accept national standards rather than additionally impose restrictions which might cause undue and unnecessary expense to the user. (P. 8.)

Since the enactment of Public Law 89-272, the Secretary of Health, Education, and Welfare has established national standards applicable to emissions from new motor vehicles for the 1968 and subsequent model years. The Congress is therefore presented directly with the question of the extent to which the Federal standards should supersede State and local laws on emissions from motor vehicles.

Rather than leave this question to the uncertainties involved in litigation, the committee has agreed, with modifications hereafter discussed, to the provision contained in the bill as passed by the Senate providing explicitly (section 208(a)) that State laws applicable to the control of emissions from new motor vehicles or new motor vehicle engines are superseded. The committee feels that a provision such as this is necessary in order to prevent a chaotic situation from developing in interstate commerce in new motor vehicles.

#### WAIVER OF PREEMPTION

As passed by the Senate, section 208(b) of the Clean Air Act proposed to provide for waiver by the Secretary of the application of subsection (a) (providing for preemption of State laws) in the case of California, upon a finding that compelling and extraordinary conditions require more stringent standards and that the State's standards and enforcement procedures were consistent with the intent of section 202(a) of the act, including economic practicability and technological feasibility. Although the situation may change, in the 15 years that auto emission standards have been debated and discussed, only the State of California has demonstrated compelling and extraordinary circumstances sufficiently different from the Nation as a whole to justify standards on automobile emissions which may, from time to time, need be more stringent than national standards.

In other words, as passed by the Senate, section 208(b) provides for a waiver of preemption in the case of California, so that California could be permitted to establish (1) more stringent standards applicable to emissions covered by Federal standards, (2) standards applicable to emissions not covered by Federal standards, and (3) enforcement procedures and standards with respect to emissions differing from Federal enforcement procedures and standard.

The manufacture of automobiles is a complex matter, requiring decisions to be made far in advance of their actual execution. The ability of those engaged in the manufacture of automobiles to obtain clear and consistent answers concerning emission controls and standards is of considerable importance so as to permit economies in production. Mr. Thomas C. Mann, president of the Automobile Manufacturers Association presented to the committee during his testimony a summary of the problems that would be faced by the industry if required to comply with both Federal and California standards, separately administered (hearings, pp. 482-483):

The process of fixing and administering emission standards for new cars is at best a complex one. Judgments must be made, often on the basis of incomplete scientific evidence, on



the question of which pollutants endanger health and welfare and at what levels it is technologically and economically feasible to fix emission rates.

In a program of this kind many questions arise. What are the requirements for testing new vehicles as they are produced each year? Precisely how are the tests to be performed and under what conditions? What are the rules for interpreting the scientific data developed in the testing process?

What kind of a certificate will be issued by the authorities? How can emissions performance of vehicles in actual use be determined and how is this data to be correlated with data developed by testing vehicles on the proving grounds?

What instrumentation will be used for testing? To measure emissions, will the so-called "mass" emissions control method based on absolute volumes be used or the "concentration" method based on percentages—having in mind that the two methods do not produce identical results?

Moreover, there are various questions of interpretations of the pertinent laws and regulations, some of which are written in very broad terms and some of which contain ambiguities. How are these to be resolved?

Uniform answers to these and other administrative questions inherent in Government controls are most important. The ability of the industry to get clear and consistent answers to questions such as these so that companies can make their plans and initiate in time their programs required for compliance can be as important as what the answer is.

The committee feels that the problems faced by the automobile manufacturing industry arising out of identical Federal and State standards, separately administered, would be difficult for the industry to meet since different administration could easily lead to different answers to identical questions. Similarly, the problems arising out of different standards applicable nationwide (except California) and to California, even though identically administered, would also lead to difficulties.

If, however, both different standards and separate administration are permitted, the difficulties faced by manufacturers would be compounded enormously. While manufacturers could meet these problems by building vehicles that meet whichever standard is the more stringent, this would lead to increased costs to consumers nationwide, with benefit only to those in one section of the country.

The committee therefore decided to provide for uniform administration of standards for motor vehicle emissions, by providing that the Secretary of Health, Education, and Welfare shall administer the program of control of automotive emissions; however, in recognition of the unique problems facing California as a result of its climate and topography, the committee has provided that upon a showing by California that it requires more stringent standards than the nationwide standards otherwise applicable, the Secretary may prescribe standards with respect to such State more stringent than, or applicable to emissions or substances not covered by, the national standards. These standards are required to be consistent with the

other provisions of title II, and are to be prescribed, giving appropriate consideration to technological feasibility and economic costs.

### FUEL ADDITIVES

The bill would provide new authority pertaining to fuel additives, in the form of a requirement that fuel manufacturers register such additives with the Secretary of Health, Education, and Welfare. This is intended to provide an opportunity for full assessment of the effects of such additives on the environment and on public health. It is clearly in the best interests of both the public and industry to evaluate the effects of additives already in widespread use and to provide a mechanism for advance evaluation of proposed new additives before they reach the environment.

These provisions of the bill would require manufacturers to furnish the Secretary such information as he finds necessary concerning the characteristics and composition of fuel additives and any additional information which he may reasonably require. It is anticipated that the Secretary will, after giving interested parties an opportunity to present their views, promulgate regulations prescribing the types of information he will require for registration. Such regulations could, of course, be modified if experience with this provision indicates that changes are necessary. Since fuel additives released into the environment from combustion sources may contaminate not only the air, but also water, soil, vegetation, and so on, it is expected that the Secretary will require manufacturers to furnish enough information to evaluate not just the air pollution problems arising from the use of fuel additives, but to assess the total effect on the human environment and human health and welfare.

The prime purpose of this proposal is to insure full access to the technical information needed to evaluate the possible health hazards of such materials. Too often, new contaminants enter the environment and are widely dispersed before recognition that they may endanger human health.

The bill would not, in itself, require registration of all fuel additives. It would empower the Secretary to designate, by regulation, those fuels or uses of fuels involving additives, for which registration will be required. The Committee expects that registration will be required with respect to additives used in motor vehicle fuels. The use of such fuels, according to all the information available to the committee, is the most important single means by which fuel additives are currently released into the environment. The Secretary would also have authority to require registration of additives to other fuels, and it is expected that he will exercise this authority with respect to any others where evaluation of known or suspected health hazards is deemed necessary.

### COOPERATIVE ACTIVITIES AND UNIFORM LAWS

Subsection 102(c) of the existing law purports to give the consent of the Congress to two or more States to negotiate agreements or compacts for cooperative efforts in the field of air pollution control, but provides that no such compact shall be binding until it has been approved by the Congress. The committee has deleted this subsection as unnecessary, since it is merely a restatement of the general con-

stitutional provision applicable to all compacts (art. I, sec. 10), and since States do not require the consent of the Federal Government to enter into negotiations.

The committee's action is not intended to discourage State efforts to work together in dealing with interstate air pollution problems. On the contrary, groups of two or more States are encouraged to mount cooperative efforts. In the committee's opinion, however, such efforts should be focused on problems in specific metropolitan areas, in which all communities clearly share a common air pollution problem. In practice, this will necessarily mean that the States involved in a particular compact or agreement should be contiguous and that a portion of each State should be within the metropolitan area covered by the compact or agreement.

#### RESEARCH, INVESTIGATIONS, TRAINING, AND OTHER ACTIVITIES

Increased research activities are essential to provide an improved technological basis for meaningful progress in air pollution control.

Section 103, as reported, requires the Secretary to conduct a research program relating to the causes, effects, extent, prevention, and control of air pollution, and to encourage and assist pollution control agencies, institutions, and individuals in the conduct of such activities. It also directs him to give special attention to pollution resulting from the combustion of fuels. It provides for advisory committees to assist the Secretary in administering the research program. The broad authority granted the Secretary to enable him to conduct such a program is carried over intact from existing law. This authority includes the ability to collect and publish information; to cooperate with other Federal agencies, with air pollution control bodies, industries, and institutions; to make grants to public or nonprofit private agencies, institutions, and organizations, and to individuals; to contract with such groups; and to provide fellowships and other forms of training. The committee has retained the location of all research provisions in a single section of the bill, as is the case in the existing law. This allows the Secretary needed flexibility in the management of research activities so that he may employ available manpower and funds efficiently.

To this end the language of subsection 103(a) of the Clean Air Act was amended as follows:

Paragraphs (4) and (5), which specifically direct research activities to be conducted in the areas of removal of sulfur from fuels, reduction of emissions of sulfur oxides produced by the combustion of sulfur-containing fuels, and control of vehicle fuel emissions and evaporation, have been deleted.

A new paragraph (4) has been substituted for the above paragraphs, which authorizes the same research activities, but in more general terms, and also authorizes additional research activities relating to means of controlling combustion byproducts of fuels.

A new paragraph (5) has been added. It requires the Secretary to establish technical advisory committees, composed of air pollution experts, to provide assistance in administering the research program, and is identical to the language contained in paragraph 104(a)(6) of S. 780 as passed by the Senate.

SEPARATE VIEWS OF MESSRS. JOHN E. MOSS AND  
LIONEL VAN DEERLIN ON S. 780, THE AIR QUALITY  
ACT OF 1967

While we believe that most of the actions taken by the committee tend to strengthen the proposed Air Quality Act, we disagree completely with the decision to eliminate the auto emission waiver provision for California.

Under the bill's section 208(b), as amended by the committee, California would have to persuade the Secretary of Health, Education, and Welfare to prescribe standards for California that were more stringent than the national standards. Even if he agreed California needed tougher regulations, the Secretary would retain administrative control over the program in that State.

As approved by the Senate, section 208(b) in effect would exempt California from the bill's requirement that States conform to the Federal auto emission standards. The burden would be on the Secretary to show why California, which already has a successful anti-pollution law of its own, should not be allowed to go beyond the Federal limitations in adopting and enforcing its own standards.

We feel the Senate provision makes sense. It is consistent with the preamble of the bill which states, in section 101(a)(3), that "the prevention and control of air pollution at its source is the primary responsibility of States and local governments."

Are we now to tell California that we don't quite trust her to run her own program, that big government should do it instead?

A look at the record should be enough to convince anyone of California's need for this exemption—and of the State's proven capabilities in the fight against smog.

As the prime victim of auto-caused air pollution, California has led the Nation in promulgating strict emission control requirements.

Since 1966, all new passenger cars and light trucks built for sale in California have been equipped to control hydrocarbon and carbon monoxide emissions from both the crankcase ventilation system and from the engine exhaust. The devices now in use each day are keeping 550,000 gallons of unburned gasoline and 2,300 tons of carbon monoxide from seeping into the air Californians breathe. Of the more than 11 million vehicles in the State, 7.8 million have crankcase controls and 1.8 million have exhaust controls.

California has been a model for the Nation in this critical field. In fact, the new Federal standards for emission control are the same as those now in force in California. The difficulty is that California, with its compelling and extraordinary problems, will require even tougher controls in the near future.

The current standard of 275 parts per million (p.p.m.) of hydrocarbons, for example, is scheduled to be dropped to 180 p.p.m. in 1970. By 1975, this standard may have to be further reduced to 100 p.p.m.

These figures are not the whim of bureaucratic minds; they are dictated by harsh reality. Motor vehicles are responsible for about 90 percent of the smog in the Los Angeles County, some 56 percent in the San Francisco Bay area, and about 50 percent in San Diego. Moreover, with 17 percent of the industry's sales concentrated there, California's burgeoning car population is increasing at the rate of 1,800 to 2,000 a day.

The auto industry has shown itself willing and able to make the modifications required for its lucrative California market. And we suspect the industry would be only too happy to comply with the special requirements of any foreign nation that accounted for as many sales as California. The objections of the auto manufacturers to the Senate-approved waiver provision, therefore, leave us distinctly unimpressed.

In short, unique local conditions virtually demand that California retain strict and hopefully total control over all efforts to reduce emissions within her boundaries.

JOHN E. MOSS.

LIONEL VAN DEERLIN.

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90TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 403

AIR QUALITY ACT OF 1967

AMENDING THE CLEAN AIR ACT  
AS AMENDED

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REPORT

OF THE

COMMITTEE ON PUBLIC WORKS  
UNITED STATES SENATE

TO ACCOMPANY

S. 780



JULY 15, 1967.—Ordered to be printed under authority of the order  
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III



## Calendar No. 390

90TH CONGRESS }  
*1st Session* }

SENATE

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REPORT  
No. 403

### AIR QUALITY ACT OF 1967—AMENDING THE CLEAN AIR ACT AS AMENDED

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(Filed under authority of the order of the Senate of July 13, 1967)

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Mr. MUSKIE, from the Committee on Public Works,  
submitted the following

### R E P O R T -

together with

### INDIVIDUAL VIEWS

[To accompany S. 780]

The Committee on Public Works, to which was referred the bill (S. 780) to amend the Clean Air Act to improve and expand the authority to conduct or assist research relating to air pollutants, to assist in the establishment of regional air quality commissions, to authorize establishment of standards applicable to emissions from establishments engaged in certain types of industry, to assist in establishment and maintenance of State programs for annual inspections of automobile emission control devices, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

Appointed members are to be selected so as to be representative of State, interstate, and local governmental agencies and of public or private interests demonstrating an active interest in the various aspects of air pollution prevention and control and related problems, as well as other individuals who are expert in the field of air pollution.

Additional technical advisory committees are authorized under this provision. Such advisory committees are to be established from time to time by the Secretary, in order to obtain assistance in the development and implementation of air quality criteria, recommended control techniques, standards, research, and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution.

The committee feels that these advisory committees should contain sufficient representation from the various groups concerned with air pollution, including State and local authorities, medical and scientific personnel, and industry experts in pollution abatement, to permit and enhance both effective and useful consultation between the Secretary and his associates and other interested parties.

## TITLE II—NATIONAL EMISSIONS STANDARDS ACT

### STATE STANDARDS (ON AUTOMOTIVE EMISSIONS)

The Clean Air Act Amendments of 1965 enabled us to begin attacking the problem of motor vehicle pollution, through the establishment of national standards applicable to new motor vehicle or new motor vehicle engines. Initial standards, pertaining to crankcase and tailpipe emissions from gasoline-powered vehicles, will become effective in the 1968 model year.

During the field hearings a good deal of testimony was heard regarding the problems and progress associated with the automobile emission control devices which will be required on all 1968 model cars and which were installed on all 1966 model cars sold in California. Information on those automobile emissions not presently covered by standards which have been promulgated either by the Secretary of Health, Education, and Welfare, or the State of California, led the committee to the conclusion that additional information is needed to improve existing standards and develop new standards for—

(a) Hydrocarbons and carbon monoxide in exhaust from all new vehicles.

(b) Nitrogen oxides emissions in exhausts from all new vehicles.

(c) Odors from new diesel-powered vehicles.

(d) Particulates from all new vehicles including smoke and the residues from additives such as lead, barium, and nickel.

Fuel additives for the reduction of pollution have been little used—and apparently little studied—in the United States, although they are required by law in several European countries. Little information on them is available in the open literature. They are primarily intended to suppress diesel smoke, and the only American study in print claims to see little effect.

During its field hearings in Los Angeles and Detroit the committee heard a good deal of testimony relating to the question of Federal preemption of the right of States to set standards on emissions from motor vehicles.

To date only California has actively engaged in this form of pollution control and, in fact, the initial Federal standard is based on California's experience. The Federal standard will be applicable to all 1968 model automobiles sold in the United States. Other States have enacted legislation and regulations governing crankcase emissions but this control method has been in general use throughout the United States since 1963.

On the question of preemption, representatives of the State of California were clearly opposed to displacing that State's right to set more stringent standards to meet peculiar local conditions. The auto industry conversely was adamant that the nature of their manufacturing mechanism required a single national standard in order to eliminate undue economic strain on the industry.

The committee has taken cognizance of both of these points of view. Senator Murphy convinced the committee that California's unique problems and pioneering efforts justified a waiver of the preemption section to the State of California. As a result, the committee incorporated in section 202(b) a waiver amendment offered by Senator Murphy. It is true that, in the 15 years that auto emission standards have been debated and discussed, only the State of California has demonstrated compelling and extraordinary circumstances sufficiently different from the Nation as a whole to justify standards on automobile emissions which may, from time to time, need be more stringent than national standards.

This situation may change. Other regions of the Nation may develop air pollution situations related to automobile emissions which will require standards different from those applicable nationally. The committee expects the Secretary to inform the Congress of any such situation in order that expansion or change in the existing waiver provision may be considered.

Until such time as additional problems of this type arise it seemed appropriate that the waiver provision of subsection (b) should be limited solely to California. This approach can have several positive values:

1. Most importantly California will be able to continue its already excellent program to the benefit of the people of that State.

2. The Nation will have the benefit of California's experience with lower standards which will require new control systems and design. In fact California will continue to be the testing area for such lower standards and should those efforts to achieve lower emission levels be successful it is expected that the Secretary will, if required to assure protection of the national health and welfare, give serious consideration to strengthening the Federal standards.

3. In the interim periods, when California and the Federal Government have differing standards, the general consumer of the Nation will not be confronted with increased costs associated with new control systems.

4. The industry, confronted with only one potential variation, will be able to minimize economic disruption and therefore provide emission control systems at lower costs to the people of the Nation.

As stated in the act the Secretary is required to waive application of preemption to California unless he finds (1) that compelling and extraordinary conditions do not exist; (2) that California's standards are not consistent with the test of economic practicability and technological feasibility required in section 202(a) of the act; or (3) that

the accompanying enforcement procedures are in conflict with the intent of section 202(a).

It is essential that the Federal Government and State of California cooperate closely in the development of enforcement procedures relative to certification of vehicles so that the industry, when confronted with differing standards, need not be faced with different methods of obtaining certification.

Implicit in this provision is the right of the Secretary to withdraw the waiver at any time after notice and an opportunity for public hearing he finds that the State of California no longer complies with the conditions of that waiver.

The committee has provided for Federal preemption of the right to set standards on new motor vehicles and new motor vehicle engines only. Specific language indicating the committee's position on the rights of the States to control the movement, operation, and use of licensed or registered vehicles is included.

This language is of particular importance. While there has been a great deal of concern expressed regarding control of new vehicles little attention has been paid to control of used vehicles, either their emissions or their use. It may be that, in some areas, certain conditions at certain times will require control of movement of vehicles. Other areas may require alternative methods of transportation. Unfortunately some of these alternatives have been ignored and the onus of control has been placed solely on the automobile manufacturers.

It is clear that, if a pollution-free (or at least minimized) rapid transit system reduced commuter traffic there would be a corresponding decrease in automobile-related air pollution. And any significant advance in control of used vehicles would result in a corresponding reduction in air pollution. These are areas in which the States and local government can be most effective.

This is not to suggest that the industry cannot do more. The committee learned during its field hearings that there could be and should be more attention paid to quality control by the manufacturer. This is extremely important at the present time and will be essential when uniform enforcement procedures are developed and emission standards are applied to individual cars.

Also, the industry must push forward much more rapidly with its research efforts and, in so doing, take advantage of technology developed outside of Detroit. The recently announced agreements between major automobile manufacturers and oil companies are gratifying in this regard.

And the fuel industry has a particular responsibility. Too little is being done by that industry to develop gasolines which contribute less to pollution. This area needs renewed emphasis both by the industry and by the Federal Government.

The committee considered it essential that the Department of Commerce be represented on the Board. As indicated in our explanation of subsection 107(c), it is intended that this Department be given many responsibilities in providing technical and economic advice under this act. Also it is believed that the participation of the Department of Commerce in the ultimate establishment of air quality standards will provide a basis for achieving the objective of air pollution abatement, with the minimum economic disruption to the various industries affected.

95TH CONGRESS }  
1st Session

HOUSE OF REPRESENTATIVES

{ REPORT  
No. 95-294

# CLEAN AIR ACT AMENDMENTS OF 1977

## REPORT

BY THE

### COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

[To accompany H.R. 6161]

together with

### ADDITIONAL, SEPARATE, AND SUPPLEMENTAL VIEWS

And Including Cost Estimate of the Congressional Budget Office



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## CLEAN AIR ACT AMENDMENTS OF 1977

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Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

### REPORT

together with

### ADDITIONAL, SEPARATE, AND SUPPLEMENTAL VIEWS

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 6161]

The Committee on Interstate and Foreign Commerce (to whom was referred the bill (H.R. 6161) to amend the Clean Air Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

#### STATEMENT OF PURPOSES AND SUMMARY OF LEGISLATION

Because the Committee Proposal portion of this report incorporates a detailed section-by-section analysis of the provisions of H.R. 6161, the following Statement of Purposes and section-by-section summary has been prepared to provide a concise explanation of the proposed legislation.

#### STATEMENT OF PURPOSES

In the view of the Committee on Interstate and Foreign Commerce, this bill (H.R. 6161) is needed for several main purposes:

(1) to extend authorizations of appropriations for nonresearch activities under the Clean Air Act;

(2) to provide a greater role and greater assistance for State and local governments in the administration of the Clean Air Act;

(1)

gency authority may take effect without prior approval of the Administrator.

A single suspension, not to exceed 4 months in duration, is authorized by this section.

#### SECTION 116—VISIBILITY PROTECTION

Section 116 is a new section of the bill. It establishes as a national goal the protection of visibility in federal mandatory class I areas. This provision also requires State plans for States with such areas and States whose emissions cause or contribute to visibility problems in such areas, to be revised to include two types of measures. First, the State plan must provide for the best available retrofit for existing sources which are causing or contributing to visibility impairment in such areas. In determining best available retrofit, consideration is to be given to costs, nonair quality environmental impacts, energy requirements, the remaining useful life of the source and the anticipated benefits to visibility which would result from use of such technology. The Administrator would not be authorized to require retrofit on any source older than 15 years and could not require use of a scrubber on any powerplant of less than 750 megawatt capacity. Second, the State plan must incorporate a long-term (10–15 year) strategy for making maximum feasible progress toward attaining the national goal. Prior to holding hearings on plan revision, the State must consult in person with the Federal land manager concerning the revision and publish the land manager's conclusions.

The Administrator, with the concurrence of the Federal land manager, may exempt by rule from the retrofit requirement, a source that he determines will not cause or contribute to significant visibility impairment in a Federal mandatory class I area. The exemption provision does not apply to fossil-fuel-fired powerplants with total generating capacity of 750 megawatts or more.

This section prohibits citizen suits from being brought to compel attainment of the national goal by any specific date. Moreover, the Administrator is prohibited from requiring the use of any mandatory or uniform buffer zone for the purpose of this section.

#### SECTION 117—NONATTAINMENT AREAS

This section is proposed as a means of assuring realization of the dual goals of attaining air quality standards and providing for new economic growth. Any State exceeding the ambient air quality standards may submit and the Administrator must approve a revised plan which:

- (1) identifies all nonattainment areas in each State for each air pollutant;
- (2) assures attainment as expeditiously as practicable, but no later than December 31, 1982 for sulfur dioxide, carbon monoxide, particulates and oxides of nitrogen. Areas not attaining the standards for oxidants must attain the standard as soon as possible but no later than December 31, 1987;
- (3) requires, during the interim period before the mandatory attainment dates, "reasonable further progress" to attain the stand-



ards defined as equal reductions in total emissions every 2 years;

(4) includes a comprehensive, current inventory of actual emissions from all sources every 2 years; and

(5) identifies and quantifies emissions the Administrator determines, by regulation, must be taken into account for purposes of attaining the standards and permitting new growth.

In revising its plan to permit new growth, the State must consider a number of factors including, but not limited to, allowable emissions of such pollutants from new sources, stationary and mobile; emissions from uncontrolled sources and fugitive emissions; emissions resulting from new, modified, or existing indirect sources; and emissions resulting from stationary sources which are granted extensions for fuel switching or compliance date extensions granted for other reasons. The State plan must contain emission limitations and schedules of compliance consistent with the section and must require permits for the construction and operation of new or modified major sources. Additionally, the owner or operator of a prospective new source (or modification) must demonstrate that all sources owned by him in that State (and certify that sources owned by him in other States) are in compliance or on a schedule for compliance. The source must also demonstrate that the issuance of a permit will not cause or contribute to concentrations of any air pollutant, for which national ambient air quality standards have not been promulgated, which would pose a significant risk to health.

Also, the State must demonstrate, by analyzing and submitting an updated, biyearly emissions inventory, that reasonable further progress toward attaining the standard has been made in each nonattainment area. Thus, the plan must provide for equal reductions every 2 years until the standards are met by the mandatory attainment date for the respective pollutant.

Finally, the committee would authorize a State with automotive-related air pollution problems to adopt and enforce new car emission standards which are identical to the California standards. The State and California must adopt these standards at least 2 years before commencement of the model year to be regulated.

Section 117 also requires the Administrator, within 1 year from enactment and biyearly thereafter, to make a study and report to Congress on the air quality health, welfare, economic, energy and social effects of: new section 117; present EPA nonattainment policy (interpretative ruling, 41 Federal Register 55524-30, December 21, 1976), including any amendment thereto; and alternative nonattainment strategies. The section also provides that until the provisions of this section are implemented by nonattainment States, EPA's interpretative ruling will remain in effect, as it may be modified by the Administrator.

#### SECTION 118—INTERNALIZATION OF COST

This is a new section of the bill, that is, it was not included in the "Clean Air Act Amendments of 1976". This section requires each State plan to be revised to include a permit fee provision. Under this provision, the owner or operator of each major stationary source subject to a permit requirement would have to pay a fee adequate to cover the



in certain highly polluted areas. The purpose of the requirements is to control hydrocarbon emissions which result when the distributor of fuel delivers it to storage tanks at the gasoline station and when the retailer fills the ultimate consumer's gasoline tank from the gas pump.

This section, similar to last year's section 211, as adopted by the House, provides that the costs of vapor recovery systems would be borne by the owner of the storage tanks and pumps, not by the franchised retailer. This section also prohibits the owner of the tanks and pumps from transferring the costs of vapor recovery to the retailer through the lease. (A clarifying addition in this year's bill permits cost pass-through in the price of any product or in the lease, if the owner of the tanks or pumps does not sell any product.) The distributor is required to reimburse the retailer for any such costs incurred prior to date of enactment.

Finally, the section permits a 3-year phase-in period for small independent marketers to install vapor recovery systems where required. However, the beginning date of such vapor recovery regulations phase-in shall be delayed by 2 years for independent gasoline marketers. In addition, the Federal Trade Commission is directed to carry out an economic analysis of the effect of vapor recovery regulations on independent gasoline marketers. EPA is then required to incorporate the FTC data in a report to Congress, to be completed within 6 months of completion of the FTC report. The Administrator may, on the basis of this report, exempt small independent marketers from the vapor recovery requirements or otherwise act to prevent these requirements from driving small independent retailers out of business.

#### SECTION 214—CALIFORNIA WAIVER

Taken from last year's bill, this section is intended to broaden and strengthen the State of California's authority to prescribe and enforce separate new motor vehicle emission standards from the Federal standards. The authority which California has under existing section 209 of the act is not limited in any respect by this provision. Rather, it permits the State to have its standards considered as a package and would require the Administrator in most instances to waive the preemption under section 209 with respect to California's standards. The Administrator would be authorized to deny such waiver only if (1) California's judgment that its standards, considered together, are at least as protective of health and welfare as Federal standards, considered together, was arbitrary and capricious; or (2) one of the findings under existing section 209(b) is made. The amendment thus confers broad discretion on the State of California to weigh the degree of health hazards from various pollutants and the degree of emission reduction achievable for various pollutants with various emission control technologies and standards.

#### SECTION 215—HIGH ALTITUDE PERFORMANCE ADJUSTMENTS

This section is nearly identical to the high altitude adjustment provision adopted last year on the House floor. It is clarified to apply to pre-1977 vehicles operating at high altitudes and to 1977 and later

Committee found there would be no constitutional bar to enactment of the provision.

Because of the availability of the cost pass-through in product price, as well as for other reasons, the Committee found that no unlawful "taking" would be involved. The Committee also found a rational relationship between this provision and the overall purposes of the legislation, i.e. that the new provisions would place responsibility for pollution control costs on the party properly chargeable for the pollution and would facilitate procurement and installation of the required equipment. Thus, the provision was found not to be arbitrary and capricious. In light of the factors referred to in this paragraph, the Committee also concluded that no denial of property without due process is involved. Nor did the Committee believe that an improper "impairment of contracts" would result from this Federal legislation.

Finally, in the case of any payment for vapor recovery equipment by a person other than the owner of the pumps and tanks which occurred prior to date of enactment, the Committee intends that the regulations under this section would establish a reasonable time period after date of enactment for such owner to reimburse any such person. The publication of these regulations will provide the owner of the pumps and tanks with reasonable notice of what is expected of him and a reasonable time to meet the requirement of the regulations. As so construed, the provision would not in the Committee's view violate the due process or ex post facto provisions of the U.S. Constitution.

#### SECTION 214—CALIFORNIA WAIVER

##### BACKGROUND

Under the Clean Air Act, as amended, in 1967, all States, except California were absolutely preempted from adopting or enforcing emission standards applicable to new motor vehicles. California was afforded special status due to that State's pioneering role in regulating automobile-related emissions, which pre-dated the Federal effort. In addition, California's air pollution problem was then, and still appears to be, among the most pervasive and acute in the Nation.

For these reasons, provision was included in the 1967 Act requiring the Administrator to waive application of the preemption to California, unless certain findings were made. Preemption was to be waived, for example, unless California standards were not "more stringent than applicable Federal standards". Also preemption could not be waived if California standards and enforcement procedures were found not to be "consistent with section 202(a)" (relating to the technological feasibility of complying with these standards).

In general, the Environmental Protection Agency has liberally construed the waiver provision so as to permit California to proceed with its own regulatory program in accordance with the intent of the 1967 Act.

##### COMMITTEE PROPOSAL

The Committee amendment is intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, i.e. to afford California the broadest possible discre-

tion in selecting the best means to protect the health of its citizens and the public welfare. The Committee is aware of California's longstanding belief that stringent control of oxides of nitrogen emission from motor vehicles may be more essential to public health protection than stringent control of carbon monoxide. This belief arises from the role of oxides of nitrogen in producing photochemical oxidants, including ozone, as well as in the formation of NO<sub>2</sub> and its derivatives, nitrates, nitrous and nitric acids, and nitrosamines.

Thus, the Committee anticipated the possibility that California's 1978 and later model year standards might be more stringent than the Federal standard for NO<sub>x</sub>, but less stringent than the Federal standard for CO. In such a case, while the entire set of California standards might be technologically feasible and the entire set of Federal standards might also be technologically feasible, the Committee envisioned the theoretical possibility that the most stringent set of standards (Federal, CO; California, NO<sub>x</sub>; etc.) might not be feasible.

To deal with such a situation, the Committee amendment requires the Administrator of EPA to grant a waiver for the entire set of California standards, unless he finds that California acted arbitrarily or capriciously in concluding that its set of standards are at least as protective of the public health and welfare as the Federal standards.

The Administrator, thus, is not to overturn California's judgment lightly. Nor is he to substitute his judgment for that of the State. There must be clear and compelling evidence that the State acted unreasonably in evaluating the relative risks of various pollutants in light of the air quality, topography, photochemistry, and climate in that State, before EPA may deny a waiver.

Moreover, once a waiver is granted to California, compliance with the State's standards is deemed to satisfy the Federal requirements in California.

#### SECTION 215—HIGH ALTITUDE PERFORMANCE ADJUSTMENT

##### BACKGROUND

Under the anti-tampering provisions of existing law discussed previously under section 212 of the bill, questions have arisen as to what kinds of repair, replacement, or adjustment activities might constitute "removal" or "rendering inoperative". Furthermore, it has become evident that vehicles calibrated for certification at sea level may not meet emission standards at higher altitudes. This is because the vehicles operated at higher altitudes run extremely fuel rich. Not only do excessive pollutant emissions result, but also such calibrations result in the waste of fuel.

In response to the concerns mentioned in the preceding paragraph, the Office of Enforcement and General Counsel of the Environmental Protection Agency issued "Mobile Source Enforcement Policy Memorandum 1A—Interim Tampering Enforcement Policy". Among other purposes, the Memorandum was intended to "reduce the uncertainty which dealers now face by providing criteria by which dealers can determine in advance that certain of their acts do not constitute tampering".

### I. Nonattainment areas

A key aspect of the conference agreement is the retention of the House provision permitting other States than California with nonattainment areas for HC, CO, NO<sub>2</sub>, or oxidants to adopt and enforce California's new motor vehicle emission standards. Also important in this respect is the conferees' retention of the House provision liberalizing and extending the California waiver provision. Under this new addition, for example, California will be able to get a waiver for its 1982 model year standards considered as a package, even though the California CO standard may be less stringent than the applicable federal CO standard. This is so because California's 1982 NO<sub>x</sub> standard is more stringent than the federally mandated NO<sub>x</sub> standard for that year. Other States with nonattainment problems for oxidant, or NO<sub>2</sub>, would be authorized to follow suit, but could not be required to do so by EPA.

In general, the conference agreement adopts much of the Senate's approach to the nonattainment problem. But, among other provisions from the House Bill, the "lowest achievable emission rate" definition in the House bill was agreed to. While the conferees believe cost is an appropriate factor to be considered in determining "achievability," there was general agreement with the House Committee report's treatment of consideration of cost in nonattainment areas at page 215. Here again, protection of the public health must be the primary concern.

### J. Trucks and motorcycles

In agreeing to the 75 percent NO<sub>x</sub> reduction requirement for 1985 model year trucks, the conferees made no judgment on the achievability of this target standard by that deadline. Revision authority is expressly provided in case such target cannot be met.

With respect to motorcycles, the conference agreement permits the Administrator, if he chooses to do so, to continue with his present program of establishing a separate and different set of standards for new motorcycles than for other motor vehicles.

### K. Noncompliance penalties

The conference agreement basically adopted the House bill approach to this provision. Three portions of the Senate bill which were agreed to are particularly worthy of noting: (1) the requirement that the penalty be calculated essentially on the basis of the economic value derived by the failure to comply (rather than on the lesser amount of the cost of compliance); (2) the absence of a ceiling on the penalty, in keeping with the purpose of the provision—i.e. to eliminate any incentive for, or economic advantage resulting from, noncompliance; and (3) the exemption from the penalty of the Louisville Gas and Electric plants, which utility early in the 1970's agreed to a compliance order and helped demonstrate flue gas desulfurization technology.

### L. Standards review

The conference agreement, as last year's conference agreement did, adopted the House provision relating to review of present national ambient air quality standards, with a slight modification. The modification provided for the first review to occur by 1980.

Nothing in this section, however, should delay EPA action to promulgate the ambient short-term NO<sub>2</sub> standard. Nor should that action be subject to prior review by the Scientific Review Committee. If it is appropriate to deal with any of the four unregulated pollutants referred to in section 122, then that action should proceed without respect to the standards review process set up for existing standards.

### M. Stack height limitations

The Conference Committee accepted the House bill's provision relating to the height of smokestacks, which provides that the emission limitations that apply to sources

of pollution shall be calculated on basis of smokestack heights sufficient to avoid "atmospheric downwash, eddies, and wakes" nearby a facility (as we defined this in the House Committee's Report on last year's bill), so long as this does not exceed 2½ times the facility's height.

It was our intent that the former condition should take precedence over the latter—that is, if it should be determined that downwash, eddies, and wakes can be prevented by stacks of less than 2½ times facility height, the Administrator's rule should give "credit" only for the height needed to avoid these conditions.

In addition, the Administrator is free to promulgate a general rule providing a "sliding scale" for stackheight, if he determines that the proportion between building height and stack height needed to avoid downwash varies according to, for example, the size of the facility—that a proportionally higher stack is needed for smaller facilities, for example, or a proportionally lower stack is sufficient for larger sources—then his rule may take this into account, so long as it generally prevents downwash eddies and wakes and not allow "credit" for stacks exceeding 2½ times building height. In other words, it was not our purpose to make a Congressional judgment about what stack height was needed to prevent downwash. We intend EPA to make this judgment, subject only to the Congressional prohibition on the excessively high stacks of over 2½ times building height.

### N. New source standards of performance best available control technology

The Conferees agreed to Section 111 of the House bill with minor modifications. Senator Randolph stated, and the Conferees agreed, during the Conference discussion of the House "Best Available Control Technology" requirement that, as the House Report, 95-294, concluded, (p. 189) current best technology achieves about 85 to 90 percent sulfur removal efficiency from the emissions of fossil-fuel fired boilers.

The intent of the House provision and of the Conference agreement is to require the Administrator to revise and strengthen current lax standards for new sources under Section 111 of the Act. Particularly troublesome are EPA's current SO<sub>2</sub> control standards and particulate control standards for coal-fired boilers. As the House Report stated: (p. 187).

... For example, instead of prescribing standards which effectively required use of the best practical control technology for new coal-fired power plants, the Administrator set levels which could be met either by use of untreated low-sulfur coal or scrubbers. These standards (e.g. 1.2 lbs. of SO<sub>2</sub>/million B.t.u's)—by not requiring use of best practicable control technology—directly conflict with the aforementioned purposes in several respects:

1. The standards give a competitive advantage to those States with cheaper low-sulfur coal and create a disadvantage for Midwestern and Eastern States where predominantly higher sulfur coals are available;
2. These standards do not provide for maximum practicable emission reduction using locally available fuels, and therefore do not maximize potential for long-term growth;
3. These standards do not help to expand the energy resources (this is, higher sulfur coal) that could be burned in compliance with emission limits as intended;
4. These standards aggravate compliance problems for existing coal-burning stationary sources which cannot retrofit and which must compete with larger, new sources for low-sulfur coal;
5. These standards increase the risk of early plant shutdowns by existing plants (for the reasons stated above), with greater risk of unemployment; and
6. These standards operate as a disincentive to the improvement of technology of new

sources, since untreated fuels could be burned instead of using such new, more effective technology.

Similar problems exist with respect to the standards for new oil-burning, stationary sources.

The Conference adopted provision is intended to rectify these problems by requiring for fossil fuel-fired boilers that a new source standard of performance be expressed as both:

1. A numerical emission limit—such as pounds of emittants per hour, and;
2. A required percentage reduction in the pollutant content of untreated fuel.

The standard of performance can be achieved by any technological control process (including precombustion treatment of fuels, such as solvent refining) approved by the permitting authority, as long as that technology assures that on a continuous basis both the numerical emission limit and the required percentage reduction are achieved. No averaging in fuel control or in emissions-content or levels is allowed in determining whether the prescribed performance standard will be met by a source.

While the Conferees agreed that the Administrator may set the percentage reduction requirement as a percentage range, the Conferees expect the Administrator to be exceedingly cautious if he should elect to do so. Any such range of percent reduction would be allowed only to reflect varying fuel characteristics, and must be based on a carefully and completely documented finding by the Administrator that such departure from the strict requirement does not undermine the basic purpose of the House provision as expressed on pages 183 through 195 of the House Report number 95-294.

### O. Prevention of significant deterioration

Both the House and Senate bills provided for authority for variance from prescribed increments. The Conferees adopted large parts of both the Senate and House provisions. The Governor of a State may grant a variance from Class I increments in Federal Mandatory Class I areas. If the Federal Land Manager concurs, that variance may be granted. If in the judgment of the Federal Land Manager the air quality values of the area (and the Conferees agreed that such values include visibility and its vigorous protection in National Parks and National Wilderness areas designated as Mandatory Class I areas) will not be adversely affected by the emissions from the source seeking a variance, and the Federal Land Manager so certifies after a complete showing by the source, the variance may be granted. If the Federal Land Manager fails to concur with the Governor's recommendation to grant a variance, the Governor may then appeal to the President. The President may grant the variance only if he finds, and so publishes, that the granting of the variance is in the national interest. Such variance shall allow Class I increments to be exceeded on no more than 18 days per year.

It is recognized that there are many difficulties in air quality modeling as applied to the 18-day variance from Class I increments. Therefore, the States, the Federal Land Managers, and the Administrator of the U.S. Environmental Protection Agency will be expected to apply reasonably conservative judgments in reviewing applications for any such variance. Furthermore, the Administrator shall carefully and completely discharge his responsibility to supervise through the required revision of the State plan, the granting of and enforcement of any variance.

The Conferees intend that any variance granted under Section 165(d)(2)(D), allow the increments spelled out for Class I areas to be exceeded on only a total of up to 18 days (or during any part of 18 days) per year. This means that the increments may be exceeded only on a total of up to 18 days

Barclays California Code of Regulations  
Title 13. Motor Vehicles (Refs & Annos)  
Division 3. Air Resources Board  
Chapter 1. Motor Vehicle Pollution Control Devices  
Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)

13 CCR § 1960.1

§ 1960.1. Exhaust Emissions Standards and Test Procedures--1981 through 2006 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.

Currentness

(a) The exhaust emissions from new 1981 model passenger cars, light-duty trucks, and medium-duty vehicles, subject to registration and sold and registered in this state, shall not exceed<sup>1</sup> :

**1981 EXHAUST EMISSION STANDARDS**  
(grams per mile)

| <i>Vehicle Type</i> <sup>2</sup> | <i>Equivalent<br/>Inertia<br/>Weight<br/>(lbs.)</i> <sup>3</sup> | <i>Durability<br/>Vehicle<br/>Basis (mi.)</i> | <i>Non-Methane Hydrocarbons</i> <sup>4</sup> |          |  | <i>Carbon<br/>Monoxide</i> | <i>Oxides of<br/>Nitrogen</i> <sup>5</sup> |
|----------------------------------|--|---|--|----------|--|----------------------------|--|
| PC                               | All  | 50,000  | (0.41)                                       |          |  | 3.4                        | 1.0  |
| PC <sup>6</sup>                  | All  | 50,000  | 0.39   | (0.41)   |  | 7.0                        | 0.7  |
| PC (Option 1)                    | All  | 100,000                                       | 0.39   | 7        |  | 3.4                        | 1.5  |
| PC (Option 2)                    | All  | 100,000                                       | 0.46   | 7        |  | 4.0                        | 1.5  |
| LDT, MDV                         | 0-3999   | 50,000  | 0.39   | (0.41)   |  | 9.0                        | 1.0  |
| LDT, MDV (Option 1)              | 0-3999   | 100,000                                       | 0.39   | (0.41) 7 |  | 9.0                        | 1.5  |
| LDT, MDV (Option 2)              | 0-3999   | 100,000                                       | 0.46   | 7        |  | 10.6                       | 1.5  |
| LDT, MDV                         | 4000-5999  | 50,000  | 0.50   | (0.50)   |  | 9.0                        | 1.5  |
| LDT, MDV (Option 1)              | 4000-5999  | 100,000                                       | 0.50   | (0.50) 7 |  | 9.0                        | 2.0  |
| MDV                              | 6000 and larger  | 50,000  | 0.60   | (0.60)   |  | 9.0                        | 2.0  |
| MDV (Option 1)                   | 6000 and larger  | 100,000                                       | 0.60   | (0.60) 7 |  | 9.0                        | 2.3  |



Intermediate in-use compliance standards shall apply to TLEVs through the 1995 model year, and to LEVs and ULEVs through the 1998 model year. In-use compliance with standards beyond 50,000 miles shall be waived through the 1995 model year for TLEVs and through the 1998 model year for LEVs and ULEVs.

<sup>7</sup> *Diesel Standards.* Manufacturers of diesel vehicles shall also certify to particulate standards at 100,000 miles. For all PCs and LDTs from 0-3750 lbs. LVW, the particulate standard is 0.08 g/mi, 0.08 g/mi, and 0.04 g/mi for TLEVs, LEVs, and ULEVs, respectively. For LDTs from 3751-5750 lbs. LVW, the particulate standard is 0.10 g/mi, 0.10g/mi, and 0.05 g/mi for TLEVs, LEVs and ULEVs, respectively. For diesel vehicles certifying to the standards set forth in Title 13, section 1960.1(g)(1), “NMOG” shall mean non-methane hydrocarbons.

<sup>8</sup> *50°F Requirement.* Manufacturers shall demonstrate compliance with the above standards for NMOG, CO, and NOx at 50 degrees F according to the procedure specified in section 11k of the “California Exhaust Emission Standards and Test Procedures for 1988 Through 2000 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” as incorporated by reference in section 1960.1(k), or according to the procedure specified in section II.C. of the “California Exhaust Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” as incorporated by reference in section 1961(d), as applicable. Hybrid electric, natural gas, and diesel-fueled vehicles shall be exempt from 50 degrees F test requirements.

<sup>9</sup> *Limit on In-Use Testing.* In-use compliance testing shall be limited to vehicles with fewer than 75,000 miles.

<sup>10</sup> *HEV Requirements.* Deterioration factors for hybrid electric vehicles shall be based on the emissions and mileage accumulation of the auxiliary power unit. For certification purposes only, Type A hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors), and demonstrating compliance with 100,000 mile emission standards shall not be required. For certification purposes only, Type B hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 75,000 mile deterioration factors). For certification purposes only, Type C hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 100,000 mile deterioration factors).

<sup>11</sup> *NMOG Credit for Direct Ozone Reduction Technology.* A manufacturer that certifies vehicles equipped with direct ozone reduction technologies shall be eligible to receive NMOG credits that can be applied to the NMOG exhaust emissions of the vehicle when determining compliance with the standard. In order to receive credit, the manufacturer must submit the following information for each vehicle model, including, but not limited to:

- (a) a demonstration of the airflow rate through the direct ozone reduction device and the ozone-reducing efficiency of the device over the range of speeds encountered in the SFTP test cycle;
- (b) an evaluation of the durability of the device for the full useful life of the vehicle; and
- (c) a description of the on-board diagnostic strategy for monitoring the performance of the device in-use.

Using the above information, the Executive Officer shall determine the value of the NMOG credit based on the calculated change in the one-hour peak ozone level using an approved airshed model.

(g)(2) The fleet average non-methane organic gas exhaust emission values from passenger cars and light-duty trucks produced and delivered for sale in California by a manufacturer each model year from 1994 through 2000 shall not exceed:

**FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION  
REQUIREMENTS FOR LIGHT-DUTY VEHICLE WEIGHT CLASSES<sup>7, 8, 9</sup>**

**[grams per mile (or “g/mi”)]**

| <i>Vehicle<br/>Type<sup>1</sup></i> | <i>Loaded Vehicle Weight (lbs.)</i> | <i>Durability Vehicle<br/>Basis (mi)<sup>7</sup></i> | <i>Model Year</i> | <i>Fleet Average Non-Methane Organic<br/>Gases<sup>2, 3, 4, 5, 6</sup></i> |
|-------------------------------------|-------------------------------------|--|-------------------|--|
| PC<br>and                           | All                                 | 50,000   | 1994              | 0.250  |
| LDT                                 | 0-3750                              |  | 1995              | 0.231  |
|                                     |                                     |  | 1996              | 0.225  |
|                                     |                                     |  | 1997              | 0.202  |
|                                     |                                     |  | 1998              | 0.157  |
|                                     |                                     |  | 1999              | 0.113  |
|                                     |                                     |  | 2000              | 0.073  |
| LDT                                 | 3751-5750                           | 50,000   | 1994              | 0.320  |
|                                     |                                     |  | 1995              | 0.295  |
|                                     |                                     |  | 1996              | 0.287  |
|                                     |                                     |  | 1997              | 0.260  |
|                                     |                                     |  | 1998              | 0.205  |
|                                     |                                     |  | 1999              | 0.150  |
|                                     |                                     |  | 2000              | 0.099  |

<sup>1</sup> “PC” means passenger cars.

“LDT” means light-duty trucks.

“TLEV” means transitional low-emission vehicle.

“LEV” means low-emission vehicle.

“ULEV” means ultra-low-emission vehicle.

“LVW” means loaded vehicle weight.

<sup>2</sup> “Non-Methane Organic Gases” (or “NMOG”) means the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

<sup>3</sup> *HEV Categories.* For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or “HEVs”) based on the range of the HEV without the use of the engine. For the purpose of calculating the adjusted NMOG emissions, the following definitions shall apply:

“*Type A HEV*” shall mean an HEV which achieves a minimum range of 60 miles over the All-Electric Range Test as defined in “California Exhaust Emission Standards and Test Procedures for 1988 Through 2000 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles” as incorporated by reference in section 1960.1(k), or in “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” as incorporated by reference in section 1961(d), as applicable.

“*Type B HEV*” shall mean an HEV which achieves a range of 40-59 miles over the All-Electric Range Test as defined in “California Exhaust Emission Standards and Test Procedures for 1988 Through 2000 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles” as incorporated by reference in section 1960.1(k), or in “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” as incorporated by reference in section 1961(d), as applicable.

“*Type C HEV*” shall mean an HEV which achieves a range of 0-39 miles over the All-Electric Range Test as defined in “California Exhaust Emission Standards and Test Procedures for 1988 Through 2000 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” as incorporated by reference in section 1960.1(k), or in “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” as incorporated by reference in section 1961(d), as applicable, and all other HEVs excluding “Type A” and “Type B” HEVs.

a. For the purpose of calculating fleet average NMOG values, vehicles which have no tailpipe emissions but use fuel-fired heaters and which are not certified as ZEVs shall be treated as “Type A HEV ULEVs.”

<sup>4</sup> *Calculation of Fleet Average NMOG Value (PCS and LDTs 0-3750 lbs. LVW).* Each manufacturer's fleet average NMOG value for the total number of PCs and LDTs from 0-3750 lbs. LVW produced and delivered for sale in California shall be calculated in units of g/mi NMOG according to the following equation, where the term “Produced” means produced and delivered for sale in California:

$$\begin{aligned} & \{[(\text{No. of Vehicles Certified to the Exhaust Emission Standards in section 1960.1(e)(1) and Produced}) \times (0.39)] + \\ & [(\text{No. of Vehicles Certified to the Phase-In Exhaust Emission Standards in section 1960.1(f)(1) and Produced}) \times (0.25)] + \\ & [(\text{No. of Vehicles Certified to the Phase-Out Exhaust Emission Standards in section 1960.1(f)(1) and Produced}) \times (0.39)] + \\ & [(\text{No. of Vehicles Certified to the Exhaust Emission Standards in section 1960.1(f)(2) and Produced}) \times (0.25)] + \\ & [(\text{No. of TLEVs excluding HEVs and Produced}) \times (0.125)] + \\ & [(\text{No. of LEVs excluding HEVs and Produced}) \times (0.075)] + \\ & [(\text{No. of ULEVs excluding HEVs and Produced}) \times (0.040)] + \end{aligned}$$



(HEV contribution factor)} /

(Total No. of Vehicles Produced, Including Zero-Emission Vehicles and HEVs):

a. “HEV contribution factor” shall mean the NMOG emission contribution of HEVs to the fleet average NMOG value. The HEV contribution factor shall be calculated in units of g/mi as follows, where the term “Produced” means produced and delivered for sale in California:

HEV contribution factor = {[No. of “Type A HEV” TLEVs Produced] x (0.100) +

[No. of “Type B HEV” TLEVs Produced] x (0.113) +

[No. of “Type C HEV” TLEVs Produced] x (0.125)} +

{[No. of “Type A HEV” LEVs Produced] x (0.057) +

[No. of “Type B HEV” LEVs Produced] x (0.066) +

[No. of “Type C HEV” LEVs Produced] x (0.075)} +

{[No. of “Type A HEV” ULEVs Produced] x (0.020) +

[No. of “Type B HEV” ULEVs Produced] x (0.030) +

[No. of “Type C HEV” ULEVs Produced] x (0.040)}

b. “Zero-Emission Vehicles” (or “ZEVs”) classified as LDTs 3751-5750 lbs. LVW which have been counted toward the ZEV requirements for PCs and LDTs 0-3750 lbs. LVW as specified in note (9) shall be included in the equation of note (4).

c. Beginning with the 1996 model year, manufacturers that produce and deliver for sale in California PCs and LDTs 0-3750 lbs. LVW that are certified to federal Tier I exhaust emission standards in 40 CFR 86.094-8 and 86.094-9 shall add the following term to the numerator of the fleet average NMOG equation in note (4) and calculate their fleet average NMOG values accordingly:

[(No. of Vehicles Certified to federal Tier I exhaust emission standards and Produced) x (0.25)]

<sup>5</sup> *Calculation of Fleet Average NMOG Value (LDTs 3751-5750 lbs. LVW).* Manufacturers that certify LDTs from 3751-5750 lbs. LVW, shall calculate a fleet average NMOG value in units of g/mi NMOG according to the following equation, where the term “Produced” means produced and delivered for sale in California:

{[(No. of Vehicles Certified to the Exhaust Emission Standards in section 1960.1(e)(1), and Produced x (0.50)] +

[(No. of Vehicles Certified to the Phase-In Exhaust Emission Standards in section 1960.1(f)(1), and Produced x (0.32)] +

[No. of Vehicles Certified to the Phase-Out Exhaust Standards in section 1960.1(f)(1), and Produced x (0.50)] +

[(No. of Vehicles Certified to the Exhaust Emission Standards in section 1960.1(f)(2), and Produced x (0.32)] +

[(No. of TLEVs Produced excluding HEVs) x (0.160)] +  
 [(No. of LEVs Produced excluding HEVs) x (0.100)] +  
 [(No. of ULEVs Produced excluding HEVs) x (0.050)] + (HEV contribution factor)} /  
 (Total No. of Vehicles Produced, Including ZEVs and HEVs).

a. “HEV contribution factor” shall mean the NMOG emission contribution of HEVs to the fleet average NMOG. The HEV contribution factor shall be calculated in units of g/mi as follows, where the term “Produced” means produced and delivered for sale in California:

HEV contribution factor =  
 {[No. of “Type A HEV” TLEVs Produced] x (0.130) +  
 [No. of “Type B HEV” TLEVs Produced] x (0.145) +  
 [No. of “Type C HEV” TLEVs Produced] x (0.160)} +  
 {[No. of “Type A HEV” LEVs Produced] x (0.075) +  
 [No. of “Type B HEV” LEVs Produced] x (0.087) +  
 [No. of “Type C HEV” LEVs Produced] x (0.100)} +  
 {[No. of “Type A HEV” ULEVs Produced] x (0.025) +  
 [No. of “Type B HEV” ULEVs Produced] x (0.037) +  
 [No. of “Type C HEV” ULEVs Produced] x (0.050)}

b. Only ZEVs which have been certified as LDTs 3751-5750 lbs. LVW and which have not been counted toward the ZEV requirements for PCs and LDTs 0-3750 lbs. LVW as specified in note (9) shall be included in the equation of note (5).

c. Beginning with the 1996 model year, manufacturers that produce and deliver for sale in California LDTs 3751-5750 lbs. LVW that are certified to the Tier I exhaust emission standards in 40 CFR 86.094-9 shall add the following term to the numerator of the fleet average NMOG equation in note (5) and calculate their fleet average NMOG values accordingly:

[(No. of Vehicles Certified to federal Tier I exhaust emission standards and Produced and Delivered for Sale in California) x (0.32)]

<sup>6</sup> *Requirements for Small Volume Manufacturers.* As used in this subsection, the term “small volume manufacturer” shall mean any vehicle manufacturer with California sales less than or equal to 3000 new PCs, LDTs and MDVs per model year based on the average number of vehicles sold by the manufacturer each model year from 1989 to 1991, except as noted below. For manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales. In 2000

and subsequent model years, small volume manufacturers shall comply with the fleet average NMOG requirements set forth below.

- a. Prior to the model year 2000, compliance with the specified fleet average NMOG requirements shall be waived.
- b. In the 2000 model year, small volume manufacturers shall not exceed a fleet average NMOG value of 0.075 g/mi for PCs and LDTs from 0-3750 lbs. LVW calculated in accordance with note (4).
- c. In the 2000 model year, small volume manufacturers shall not exceed a fleet average NMOG value of 0.100 g/mi for LDTs from 3751-5750 lbs. LVW calculated in accordance with note (5).
- d. If a manufacturer's average California sales exceeds 3000 units of new PCs, LDTs, and MDVs based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall no longer be treated as a small volume manufacturer and shall comply with the fleet average requirements applicable for larger manufacturers as specified in section 1960.1(g)(2) beginning with the fourth model year after the last of the three consecutive model years.
- e. If a manufacturer's average California sales falls below 3000 units of new PCs, LDTs, and MDVs based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall be treated as a small volume manufacturer and shall be subject to requirements for small volume manufacturers as specified in section 1960.1(g)(2) beginning with the next model year.

<sup>7</sup> *Calculation of NMOG Credits/Debits and Procedures for Offsetting Debits.*

- a. In 1992 through 2000 model years, manufacturers that achieve fleet average NMOG values lower than the fleet average NMOG requirement for the corresponding model year shall receive credits in units of g/mi NMOG determined as:  $\{[(\text{Fleet Average NMOG Requirement}) - (\text{Manufacturer's Fleet Average NMOG Value})] \times (\text{Total No. of Vehicles Produced and Delivered for Sale in California, Including ZEVs and HEVs})\}$ .

Manufacturers with fleet average NMOG values greater than the fleet average requirement for the corresponding model year shall receive debits in units of g/mi NMOG equal to the amount of negative credits determined by the aforementioned equation. For any given model year, the total g/mi NMOG credits or debits earned for PCs and LDTs 0-3750 lbs. LVW and for LDTs 3751-5750 lbs. LVW shall be summed together. The resulting amount shall constitute the g/mi NMOG credits or debits accrued by the manufacturer for the model year.

- b. For the 1994 through 1997 model years, manufacturers shall equalize emission debits within three model years and prior to the end of the 1998 model year by earning g/mi NMOG emission credits in an amount equal to their g/mi NMOG debits, or by submitting a commensurate amount of g/mi NMOG credits to the Executive Officer that were earned previously or acquired from another manufacturer. For 1998 through 2000 model years, manufacturers shall equalize emission debits by the end of the following model year. If emission debits are not equalized within the specified time period, the manufacturer shall be subject to the [Health and Safety Code section 43211](#) civil penalty applicable to a manufacturer which sells a new motor vehicle that does not meet the applicable emission standards adopted by the state board. The cause of action shall be deemed to accrue when the emission debits are not equalized by the end of the specified time period. For the purposes of [Health and Safety Code section 43211](#), the number of vehicles not meeting the state board's emission standards shall be determined by dividing the total amount of g/mi NMOG emission debits for the model year by the g/mi NMOG fleet

average requirement for PCs and LDTs 0-3750 lbs. LVW applicable for the model year in which the debits were first incurred.

c. The g/mi NMOG emission credits earned in any given model year shall retain full value through the subsequent model year. The g/mi NMOG value of any credits not used to equalize the previous model-year's debit, shall be discounted by 50% at the beginning of the second model year after being earned, discounted to 25% of its original value if not used by the beginning of the third model year after being earned, and will have no value if not used by the beginning of the fourth model year after being earned.

d. In order to verify the status of a manufacturer's compliance with the fleet average requirements for a given model year, and in order to confirm the accrual of NMOG credits or debits, each manufacturer shall submit an annual report to the Executive Office which sets forth the production data used to establish compliance, by no later than March 1 of the calendar year following the close of the completed model year.

<sup>8</sup> *Credits for Pre-1994 Model Year Vehicles.* Manufacturers that produce and deliver for sale in California vehicles certified to the phase-in exhaust emission standards in section 1960.1(f)(1), or vehicles certified to the exhaust emission standards in sections 1960.1(f)(2) or 1960.1(g)(1) and/or ZEVs, in the 1992 and 1993 model years, shall receive emission credits as determined by the equations in footnotes (4), (5), and (7).

a. For PCs and LDTs from 0-3750 lbs. LVW, the fleet average NMOG requirement for calculating a manufacturer's emission credits shall be 0.390 and 0.334 g/mi NMOG for vehicles certified for the 1992 and 1993 model years, respectively.

b. For LDTs from 3751-5750 lbs. LVW, the fleet average NMOG requirement for calculating a manufacturer's emission credits shall be 0.500 and 0.428 g/mi NMOG for vehicles certified for the 1992 and 1993 model years, respectively.

c. Emission credits earned prior to the 1994 model year shall be considered as earned in the 1994 model year and discounted in accordance with the schedule specified in footnote (7).

(h)(1) *"Tier 1" Exhaust Emission Standards for MDVs.* The exhaust emissions from new 1995 through 2003 model Tier 1 medium-duty vehicles shall not exceed:

**1995-2003 MODEL-YEAR TIER 1 MEDIUM-DUTY  
VEHICLE EXHAUST EMISSIONS STANDARDS<sup>1, 2, 3, 7, 8</sup>**

(grams per mile)


| <i>Test Weight (lbs.)</i> | <i>Durability Vehicle Basis (mi)</i> | <i>Non-Methane Hydrocarbons<sup>4</sup></i> | <i>Carbon Monoxide</i> | <i>Oxides of Nitrogen<sup>5</sup></i> | <i>Particulates<sup>6</sup></i> |
|---------------------------|--------------------------------------|---|------------------------|---------------------------------------|---------------------------------|
| 0-3,750                   | 50,000                               | 0.25  | 3.4                    | 0.4                                   | n/a                             |
| 0-3,750                   | 120,000                              | 0.36  | 5.0                    | 0.55                                  | 0.08                            |

## Credits

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, 43101, 43104 and 43105, Health and Safety Code. Reference: Sections 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43100, 43101, 43101.5, 43102, 43103, 43104, 43105, 43106, 43107 and 43204-43205.5, Health and Safety Code.

## HISTORY

1. Amendment filed 1-14-83; effective thirtieth day thereafter (Register 83, No. 3).
2. Amendment of subsection (h) filed 4-20-83; effective upon filing pursuant to [Government Code section 11346.2\(d\)](#) (Register 83, No. 17).
3. Amendment of subsection (h) filed 2-17-84; effective thirtieth day thereafter (Register 84, No. 7).
4. Editorial correction of subsection (i) filed 5-8-84; effective thirtieth day thereafter (Register 84, No. 19).
5. Amendment of subsection (h) filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).
6. Amendment of subsections (d)-(k) filed 4-21-87; operative 5-21-87 (Register 87, No. 17).
7. Amendment of subsections (d), (e) and (h) filed 7-1-87; operative 7-31-87 (Register 87, No. 28).
8. Amendment filed 2-21-90; operative 3-23-90 (Register 90, No. 8).
9. Amendment of subsections (e) and (i), new subsections (f)(1) and (f)(2) and renumbering of subsections (f)-(k) to subsections (g)-(l) filed 5-22-90; operative 6-21-90 (Register 90, No. 28).
10. Amendment of subsections (e), (f), (g), (h), (i), (j), (k), (l) and (m) filed 8-2-91; operative 9-2-91 (Register 91, No. 49).
11. New subsection (g) and subsection renumbering filed 8-30-91; operative 9-30-91 (Register 92, No. 14).
12. New subsections (e)(3), (h)(2) and (o) filed 8-30-91; operative 9-30-91 (Register 92, No. 14).
13. New subsections (e)(1), (e)(2), (f)(1), (f)(2) and (h)(1) filed 8-30-91; operative 9-30-91 (Register 92, No. 14).
14. Editorial correction of printing error restoring inadvertently omitted subsections (g)(2) and (h)(1)(4) (Register 92, No. 25).
15. Amendment of footnotes 4 and 6 in subsection (e)(3)'s Table, footnotes 3, 4 and 8 in subsection (g)(1)'s Table, footnotes 3, 4a, 9a, and 13 in subsection (h)(2)'s Table, and subsection (k) filed 11-9-92; operative 12-9-92 (Register 92, No. 46).
16. Amendment of subsection (k) filed 12-9-92; operative 1-1-93 (Register 92, No. 50).
17. Amendment of subsection (k) and NOTE filed 7-20-93; operative 8-19-93 (Register 93, No. 30).
18. Amendment of subsection (k) filed 11-2-93; operative 12-2-93 (Register 93, No. 45).

 KeyCite Yellow Flag - Negative Treatment  
Proposed Regulation

Barclays California Code of Regulations  
Title 13. Motor Vehicles (Refs & Annos)  
Division 3. Air Resources Board  
Chapter 1. Motor Vehicle Pollution Control Devices  
Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)

13 CCR § 1961.3

§ 1961.3. Greenhouse Gas Exhaust Emission Standards and Test Procedures--2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles.

Currentness

*Introduction.* This section 1961.3 sets the greenhouse gas emission levels from new 2017 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles. Light-duty trucks from 3751 lbs. LVW - 8500 lbs. GVW that are certified to the Option 1 LEV II NOx Standard in section 1961(a)(1) are exempt from these green-

house gas emission requirements, however, passenger cars, light-duty trucks 0-3750 lbs. LVW, and medium-duty passenger vehicles are not eligible for this exemption.

Emergency vehicles may be excluded from these greenhouse gas emission requirements. The manufacturer must notify the Executive Officer that they are making such an election, in writing, prior to the start of the applicable model year or must comply with this section 1961.3.

(a) *Greenhouse Gas Emission Requirements.*

(1) *Fleet Average Carbon Dioxide Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles.* For the purpose of determining compliance with this subsection (a)(1), the applicable fleet average CO<sub>2</sub> mass emission standards for each model year is the sales-weighted average of the calculated CO<sub>2</sub> exhaust mass emission target values for each manufacturer. For each model year, the sales-weighted fleet average CO<sub>2</sub> mass emissions value shall not exceed the sales-weighted average of the calculated CO<sub>2</sub> exhaust mass emission target values for that manufacturer.

(A) *Fleet Average Carbon Dioxide Target Values for Passenger Cars.* The fleet average CO<sub>2</sub> exhaust mass emission target values for passenger cars that are produced and delivered for sale in California each model year shall be determined as follows:

1. For passenger cars with a footprint of less than or equal to 41 square feet, the gram per mile CO<sub>2</sub> target value shall be selected for the appropriate model year from the following table:

*Model Year*

*CO<sub>2</sub> Target Value (grams/mile)*

|                     |       |
|---------------------|-------|
| 2017                | 195.0 |
| 2018                | 185.0 |
| 2019                | 175.0 |
| 2020                | 166.0 |
| 2021                | 157.0 |
| 2022                | 150.0 |
| 2023                | 143.0 |
| 2024                | 137.0 |
| 2025 and subsequent | 131.0 |

2. For passenger cars with a footprint of greater than 56 square feet, the gram per mile CO<sub>2</sub> target value shall be selected for the appropriate model year from the following table:

| <i>Model Year</i>   | <i>CO<sub>2</sub> Target Value (grams/mile)</i> |
|---------------------|---|
| 2017                | 263.0   |
| 2018                | 250.0   |
| 2019                | 238.0   |
| 2020                | 226.0   |
| 2021                | 215.0   |
| 2022                | 205.0   |
| 2023                | 196.0   |
| 2024                | 188.0   |
| 2025 and subsequent | 179.0   |

3. For passenger cars with a footprint that is greater than 41 square feet and less than or equal to 56 square feet, the gram per mile CO<sub>2</sub> target value shall be calculated using the following equation and rounded to the nearest 0.1 grams/mile:

$$\text{Target gCO}_2/\text{mile} = [a \times f] + b$$

Where:  $f$  is the vehicle footprint and coefficients  $a$  and  $b$  are selected from the following table for the applicable model year.

| <i>Model Year</i> | <i>a</i> | <i>b</i> |
|-------------------|----------|----------|
|-------------------|----------|----------|

|                     |      |      |
|---------------------|------|------|
| 2017                | 4.53 | 8.9  |
| 2018                | 4.35 | 6.5  |
| 2019                | 4.17 | 4.2  |
| 2020                | 4.01 | 1.9  |
| 2021                | 3.84 | -0.4 |
| 2022                | 3.69 | -1.1 |
| 2023                | 3.54 | -1.8 |
| 2024                | 3.4  | -2.5 |
| 2025 and subsequent | 3.26 | -3.2 |

(B) *Fleet Average Carbon Dioxide Target Values for Light-Duty Trucks and Medium-Duty Passenger Vehicles.* The fleet average CO<sub>2</sub> exhaust mass emission target values for light-duty trucks and medium-duty passenger vehicles that are produced and delivered for sale in California each model year shall be determined as follows:

1. For light-duty trucks and medium-duty passenger vehicles with a footprint of less than or equal to 41 square feet, the gram per mile CO<sub>2</sub> target value shall be selected from the following table:

| <i>Model Year</i>   | <i>CO<sub>2</sub> Target Value (grams/mile)</i> |
|---------------------|---|
| 2017                | 238.0   |
| 2018                | 227.0   |
| 2019                | 220.0   |
| 2020                | 212.0   |
| 2021                | 195.0   |
| 2022                | 186.0   |
| 2023                | 176.0   |
| 2024                | 168.0   |
| 2025 and subsequent | 159.0   |

2. For light-duty trucks and medium-duty passenger vehicles with a footprint of greater than 41 square feet and less than or equal to the maximum footprint value specified in the table below for each model year, the gram/mile CO<sub>2</sub> target value shall be calculated using the following equation and rounded to the nearest 0.1 grams/mile:

$$\text{Target gCO}_2/\text{mile} = [a \times f] + b$$



Where:  $f$  is the vehicle footprint and coefficients  $a$  and  $b$  are selected from the following table for the applicable model year.

| <i>Model year</i>   | <i>Maximum Footprint</i> | <i>a</i> | <i>b</i> |
|---------------------|--------------------------|----------|----------|
| 2017                | 50.7                     | 4.87     | 38.3     |
| 2018                | 60.2                     | 4.76     | 31.6     |
| 2019                | 66.4                     | 4.68     | 27.7     |
| 2020                | 68.3                     | 4.57     | 24.6     |
| 2021                | 73.5                     | 4.28     | 19.8     |
| 2022                | 74.0                     | 4.09     | 17.8     |
| 2023                | 74.0                     | 3.91     | 16.0     |
| 2024                | 74.0                     | 3.74     | 14.2     |
| 2025 and subsequent | 74.0                     | 3.58     | 12.5     |

3. For light-duty trucks and medium-duty passenger vehicles with a footprint that is greater than the minimum footprint value specified in the table below and less than or equal to the maximum footprint value specified in the table below for each model year, the gram/mile CO<sub>2</sub> target value shall be calculated using the following equation and rounded to the nearest 0.1 grams/mile:

$$\text{Target gCO}_2/\text{mile} = [a \times f] + b$$

Where:  $f$  is the vehicle footprint and coefficients  $a$  and  $b$  are selected from the following table for the applicable model year.

| <i>Model year</i> | <i>Minimum Footprint</i> | <i>Maximum Footprint</i> | <i>a</i> | <i>b</i> |
|-------------------|--------------------------|--------------------------|----------|----------|
| 2017              | 50.7                     | 66.0                     | 4.04     | 80.5     |
| 2018              | 60.2                     | 66.0                     | 4.04     | 75.0     |

4. For light-duty trucks and medium-duty passenger vehicles with a footprint that is greater than the minimum value specified in the table below for each model year, the gram/mile CO<sub>2</sub> target value shall be selected for the applicable model year from the following table:

| <i>Model year</i> | <i>Minimum Footprint</i> | <i>CO<sub>2</sub> target value (grams/mile)</i> |
|-------------------|--------------------------|---|
| 2017              | 66.0                     | 347.0   |
| 2018              | 66.0                     | 342.0   |
| 2019              | 66.4                     | 339.0   |
| 2020              | 68.3                     | 337.0   |

|                     |      |       |
|---------------------|------|-------|
| 2021                | 73.5 | 335.0 |
| 2022                | 74.0 | 321.0 |
| 2023                | 74.0 | 306.0 |
| 2024                | 74.0 | 291.0 |
| 2025 and subsequent | 74.0 | 277.0 |

(C) *Calculation of Manufacturer-Specific Carbon Dioxide Fleet Average Standards.* For each model year, each manufacturer must comply with fleet average CO<sub>2</sub> standards for passenger cars and for light-duty trucks plus medium-duty passenger vehicles, as applicable, calculated for that model year as follows. For each model year, a manufacturer must calculate separate fleet average CO<sub>2</sub> values for its passenger car fleet and for its combined light-duty truck plus medium-duty passenger vehicle fleet using the CO<sub>2</sub> target values in subsection (a)(A). These calculated CO<sub>2</sub> values are the manufacturer-specific fleet average CO<sub>2</sub> standards for passenger cars and for light-duty trucks plus medium-duty passenger vehicles, as applicable, which apply for that model year.

1. A CO<sub>2</sub> target value shall be calculated in accordance with subparagraph (a)(1)(A) or (a)(1)(B), as applicable, for each unique combination of model type and footprint value.
2. Each CO<sub>2</sub> target value, determined for each unique combination of model type and footprint value, shall be multiplied by the total production of that model type/footprint combination for the applicable model year.
3. The resulting products shall be summed, and that sum shall be divided by the total production of passenger cars or total combined production of light-duty trucks and medium-duty passenger vehicles, as applicable, in that model year. The result shall be rounded to the nearest whole gram per mile. This result shall be the applicable fleet average CO<sub>2</sub> standard for the manufacturer's passenger car fleet or its combined light-duty truck and medium-duty passenger vehicle fleet, as applicable.

(2) *Nitrous Oxide (N<sub>2</sub>O) and Methane (CH<sub>4</sub>) Exhaust Emission Standards for Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles.* Each manufacturer's fleet of combined passenger automobile, light-duty trucks, and medium-duty passenger vehicles must comply with N<sub>2</sub>O and CH<sub>4</sub> standards using either the provisions of subsection (a)(2)(A), subsection (a)(2)(B), or subsection (a)(2)(C). Except with prior approval of the Executive Officer, a manufacturer may not use the provisions of both subsection (a)(2)(A) and subsection (a)(2)(B) in the same model year. For example, a manufacturer may not use the provisions of subsection (a)(2)(A) for their passenger automobile fleet and the provisions of subsection (a)(2)(B) for their light-duty truck and medium-duty passenger vehicle fleet in the same model year. The manufacturer may use the provisions of both subsections (a)(2)(A) and (a)(2)(C) in the same model year. For example, a manufacturer may meet the N<sub>2</sub>O standard in subsection (a)(2)(A)1 and an alternative CH<sub>4</sub> standard determined under subsection (a)(2)(C).

(A) *Standards Applicable to Each Test Group.*

1. Exhaust emissions of N<sub>2</sub>O shall not exceed 0.010 grams per mile at full useful life, as measured on the FTP (40 CFR, Part 86, Subpart B), as amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles.” Manufacturers may optionally determine an alternative N<sub>2</sub>O standard under subsection (a)(2)(C).

2. Exhaust emissions of CH<sub>4</sub> shall not exceed 0.030 grams per mile at full useful life, as measured on the FTP (40 CFR, Part 86, Subpart B), as amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.” Manufacturers may optionally determine an alternative CH<sub>4</sub> standard under subsection (a)(2)(C).

(B) *Including N<sub>2</sub>O and CH<sub>4</sub> in Fleet Averaging Program.* Manufacturers may elect to not meet the emission standards in subsection (a)(2)(A). Manufacturers making this election shall measure N<sub>2</sub>O and CH<sub>4</sub> emissions for each unique combination of model type and footprint value on both the FTP test cycle and the Highway Fuel Economy test cycle at full useful life, multiply the measured N<sub>2</sub>O emissions value by 298 and the measured CH<sub>4</sub> emissions value by 25, and include both of these adjusted N<sub>2</sub>O and CH<sub>4</sub> full useful life values in the fleet average calculations for passenger automobiles and light-duty trucks plus medium-duty passenger vehicles, as calculated in accordance with subsection (a)(2)(A)(D).

(C) *Optional Use of Alternative N<sub>2</sub>O and/or CH<sub>4</sub> Standards.* Manufacturers may select an alternative standard applicable to a test group, for either N<sub>2</sub>O or CH<sub>4</sub>, or both. For example, a manufacturer may choose to meet the N<sub>2</sub>O standard in subsection (a)(2)(A)1 and an alternative CH<sub>4</sub> standard in lieu of the standard in subsection (a)(2)(A)2. The alternative standard for each pollutant must be less stringent than the applicable exhaust emission standard specified in subsection (a)(2)(A). Alternative N<sub>2</sub>O and CH<sub>4</sub> standards apply to emissions as measured on the FTP (40 CFR, Part 86, Subpart B), as amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” for the full useful life, and become the applicable certification and in-use emission standard(s) for the test group. Manufacturers using an alternative standard for N<sub>2</sub>O and/or CH<sub>4</sub> must calculate emission debits according to the provisions of subsection (a)(2)(D) for each test group/alternative standard combination. Debits must be included in the calculation of total credits or debits generated in a model year as required under subsection (b)(1)(B). Flexible fuel vehicles (or other vehicles certified for multiple fuels) must meet these alternative standards when tested on all applicable test fuel type.

(D) *CO<sub>2</sub>-Equivalent Debits.* CO<sub>2</sub>-equivalent debits for test groups using an alternative N<sub>2</sub>O and/or CH<sub>4</sub> standard as determined under (a)(2)(C) shall be calculated according to the following equation and rounded to the nearest whole gram per mile:

$$\text{Debits} = \text{GWP} \times (\text{Production}) \times (\text{AltStd} - \text{Std})$$

Where:

Debits = N<sub>2</sub>O or CH<sub>4</sub> CO<sub>2</sub>-equivalent debits for a test group using an alternative N<sub>2</sub>O or CH<sub>4</sub> standard;

GWP = 25 if calculating CH<sub>4</sub> debits and 298 if calculating N<sub>2</sub>O debits; Production = The number of vehicles of that test group produced and delivered for sale in California;

AltStd = The alternative standard (N<sub>2</sub>O or CH<sub>4</sub>) selected by the manufacturer under (a)(2)(C); and

Std = The exhaust emission standard for N<sub>2</sub>O or CH<sub>4</sub> specified in (a)(2)(A).

(3) *Alternative Fleet Average Standards for Manufacturers with Limited U.S. Sales.* Manufacturers meeting the criteria in this subsection (a)(3) may request that the Executive Officer establish alternative fleet average CO<sub>2</sub> standards that would apply instead of the standards in subsection (a)(1).

(A) *Eligibility for Alternative Standards.* Eligibility as determined in this subsection (a)(3) shall be based on the total sales of combined passenger cars, light-duty trucks, and medium-duty passenger vehicles. The terms “sales” and “sold” as used in this subsection (a)(3) shall mean vehicles produced and delivered for sale (or sold) in the states and territories of the United States. For the purpose of determining eligibility the sales of related companies shall be aggregated according to the provisions of section 1900. To be eligible for alternative standards established under this subsection (a)(3), the manufacturer's average sales for the three most recent consecutive model years must remain below 5,000. If a manufacturer's average sales for the three most recent consecutive model years exceeds 4,999, the manufacturer will no longer be eligible for exemption and must meet applicable emission standards as follows.

1. If a manufacturer's average sales for three consecutive model years exceeds 4,999, and if the increase in sales is the result of corporate acquisitions, mergers, or purchase by another manufacturer, the manufacturer shall comply with the emission standards described in subsections (a)(1) and (a)(2), as applicable, beginning with the first model year after the last year of the three consecutive model years.

2. If a manufacturer's average sales for three consecutive model years exceeds 4,999 and is less than 50,000, and if the increase in sales is solely the result of the manufacturer's expansion in vehicle production (not the result of corporate acquisitions, mergers, or purchase by another manufacturer), the manufacturer shall comply with the emission standards described in subsections (a)(1) and (a)(2), as applicable, beginning with the second model year after the last year of the three consecutive model years.

(B) *Requirements for New Entrants into the U.S. Market.* New entrants are those manufacturers without a prior record of automobile sales in the United States and without prior certification to (or exemption from, under [40 CFR § 86.1801-12\(k\)](#)) greenhouse gas emission standards in [40 CFR § 86.1818-12](#) or greenhouse gas standards in section 1961.1. In addition to the eligibility requirements stated in subsection (a)(3)(A), new entrants must meet the following requirements:

1. In addition to the information required under subsection (a)(3)(D), new entrants must provide documentation that shows a clear intent by the company to actually enter the U.S. market in the years for which alternative standards are requested. Demonstrating such intent could include providing documentation that shows the establishment of a U.S. dealer network, documentation of work underway to meet other U.S. requirements (e.g., safety standards), or other information that reasonably establishes intent to the satisfaction of the Executive Officer.

2. Sales of vehicles in the U.S. by new entrants must remain below 5,000 vehicles for the first two model years in the U.S. market and the average sales for any three consecutive years within the first five years of entering the U.S. market must remain below 5,000 vehicles. Vehicles sold in violation of these limits will be considered not covered by the certificate of conformity and the manufacturer will be subject to penalties on an individual-vehicle basis for sale of vehicles not covered by a certificate. In addition, violation of these limits will result in loss of eligibility for alternative standards until such point as the manufacturer demonstrates two consecutive model years of sales below 5,000 automobiles.

3. A manufacturer with sales in the most recent model year of less than 5,000 automobiles, but where prior model year sales were not less than 5,000 automobiles, is eligible to request alternative standards under subsection (a)(3). However, such a manufacturer will be considered a new entrant and subject to the provisions regarding new entrants in this subsection (a)(3), except that the requirement to demonstrate an intent to enter the U.S. market in subsection (a)(3)(B)(1) shall not apply.

(C) *How to Request Alternative Fleet Average Standards.* Eligible manufacturers may petition for alternative standards for up to five consecutive model years if sufficient information is available on which to base such standards.

1. To request alternative standards starting with the 2017 model year, eligible manufacturers must submit a completed application no later than July 30, 2013.

2. To request alternative standards starting with a model after 2017, eligible manufacturers must submit a completed application no later than 36 months prior to the start of the first model year to which the alternative standards would apply.

3. The application must contain all the information required in subsection (a)(3)(D), and must be signed by a chief officer of the company. If the Executive Officer determines that the content of the request is incomplete or insufficient, the manufacturer will be notified and given an additional 30 days to amend the request.

4. A manufacturer may elect to petition for alternative standards under this subsection (a)(3)(C) by submitting to ARB a copy of the data and information submitted to EPA as required under [40 CFR § 86.1818-12\(g\)](#), incorporated by reference in and amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” and the EPA approval of the manufacturer's request for alternative fleet average standards for the 2017 through 2025 MY National Greenhouse Gas Program.

(D) *Data and Information Submittal Requirements.* Eligible manufacturers requesting alternative standards under subsection (a)(3) must submit the following information to the California Air Resources Board. The Executive Officer may request additional information as s/he deems appropriate. The completed request must be sent to the California Air Resources Board at the following address: Chief, Mobile Source Operations Division, California Air Resources Board, 9480 Telstar Avenue, Suite 4, El Monte, California 91731.

1. *Vehicle Model and Fleet Information.*

- a. The model years to which the requested alternative standards would apply, limited to five consecutive model years.
- b. Vehicle models and projections of production volumes for each model year.
- c. Detailed description of each model, including the vehicle type, vehicle mass, power, footprint, and expected pricing.
- d. The expected production cycle for each model, including new model introductions and redesign or refresh cycles.

## *2. Technology Evaluation Information.*

- a. The CO<sub>2</sub> reduction technologies employed by the manufacturer on each vehicle model, including information regarding the cost and CO<sub>2</sub> -reducing effectiveness. Include technologies that improve air conditioning efficiency and reduce air conditioning system leakage, and any “off-cycle” technologies that potentially provide benefits outside the operation represented by the FTP and the HWFET.
- b. An evaluation of comparable models from other manufacturers, including CO<sub>2</sub> results and air conditioning credits generated by the models. Comparable vehicles should be similar, but not necessarily identical, in the following respects: vehicle type, horsepower, mass, power-to-weight ratio, footprint, retail price, and any other relevant factors. For manufacturers requesting alternative standards starting with the 2017 model year, the analysis of comparable vehicles should include vehicles from the 2012 and 2013 model years, otherwise the analysis should at a minimum include vehicles from the most recent two model years.
- c. A discussion of the CO<sub>2</sub>-reducing technologies employed on vehicles offered outside of the U.S. market but not available in the U.S., including a discussion as to why those vehicles and/or technologies are not being used to achieve CO<sub>2</sub> reductions for vehicles in the U.S. market.
- d. An evaluation, at a minimum, of the technologies projected by the California Air Resources Board in the “Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider the “LEV III” Amendments to The California Greenhouse Gas and Criteria Pollutant Exhaust and Evaporative Emission Standards and Test Procedures and to the On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles” and the appendices to this report, released on December 7, 2011, as those technologies likely to be used to meet greenhouse gas emission standards and the extent to which those technologies are employed or projected to be employed by the manufacturer. For any technology that is not projected to be fully employed, the manufacturer must explain why this is the case.

## *3. Information Supporting Eligibility.*

- a. U.S. sales for the three previous model years and projected sales for the model years for which the manufacturer is seeking alternative standards.

b. Information regarding ownership relationships with other manufacturers, including details regarding the application of the provisions of 40 CFR § 86.1838-01(b)(3) and section 1900 regarding the aggregation of sales of related companies.

(E) *Alternative Standards*. Upon receiving a complete application, the Executive Officer will review the application and determine whether an alternative standard is warranted. If the Executive Officer judges that an alternative standard is warranted, the following standards shall apply. For the purposes of this subsection (a)(3)(E), an “ultra-small volume manufacturer” shall mean a manufacturer that meets the requirements of subsection (a)(3).

1. At the beginning of the model year that is three model years prior to the model year for which an alternative standard is requested, each ultra-small volume manufacturer shall identify all vehicle models from the model year that is four model years prior to the model year for which an alternative standard is requested, certified by a large volume manufacturer that are comparable to that small volume manufacturer's vehicle models for the model year for which an alternative standard is requested, based on model type and footprint value. The ultra-small volume manufacturer shall demonstrate to the Executive Officer the appropriateness of each comparable vehicle model selected. Upon approval of the Executive Officer, s/he shall provide to the ultra-small volume manufacturer the target grams CO<sub>2</sub> per mile for each vehicle model type and footprint value that is approved. The ultra-small volume manufacturer shall calculate its fleet average CO<sub>2</sub> standard in accordance with subsection (a)(1)(C) based on these target grams CO<sub>2</sub> per mile values provided by the Executive Officer.

2. In the 2017 and subsequent model years, an ultra-small volume manufacturer shall either:

a. not exceed its fleet average CO<sub>2</sub> standard calculated in accordance with subsection (a)(1)(C) based on the target grams CO<sub>2</sub> per mile values provided by the Executive Officer; or

b. upon approval of the Executive Officer, if an ultra-small volume manufacturer demonstrates a vehicle model uses an engine, transmission, and emission control system and has a footprint value that are identical to a configuration certified for sale in California by a large volume manufacturer, those ultra-small volume manufacturer vehicle models are exempt from meeting the requirements in paragraph 2.a of this subsection.

(F) *Restrictions on Credit Trading*. Manufacturers subject to alternative standards approved by the Executive Officer under this subsection (a)(3) may not trade credits to another manufacturer. Transfers of credits between a manufacturer's car and truck fleets are allowed.

(4) *Greenhouse Gas Emissions Values for Electric Vehicles, “Plug-In” Hybrid Electric Vehicles, and Fuel Cell Vehicles*.

(A) *Electric Vehicle Calculations*.

1. For each unique combination of model type and footprint value, a manufacturer shall calculate the City CO<sub>2</sub> Value using the following formula:

$$\text{City CO}_2 \text{ Value} = (270 \text{ gCO}_2\text{e/kWh}) * E_{\text{EV}} - 0.25 * \text{CO}_2 \text{ target}$$



Where  $E_{EV}$  is measured directly from each cycle for each test vehicle of battery electric vehicle technology in units of kilowatt-hours per mile (per SAE J1634, incorporated herein by reference).

2. For each unique combination of model type and footprint value, a manufacturer shall calculate the Highway CO<sub>2</sub> Value using the following formula:

$$\text{Highway CO}_2 \text{ Value} = (270 \text{ gCO}_2\text{e/kWh}) * E_{EV} - 0.25 * \text{CO}_2 \text{ target}$$

Where  $E_{EV}$  is measured directly from each cycle for each test vehicle of battery electric vehicle technology in units of kilowatt-hours per mile (per SAE J1634, incorporated herein by reference).

(B) *“Plug-In” Hybrid Electric Vehicle Calculations.* For each unique combination of model type and footprint value, a manufacturer shall calculate the City CO<sub>2</sub> Value and the Highway CO<sub>2</sub> Value using the following formulas:

$$\text{City CO}_2 \text{ Value} = \text{GHG}_{\text{urban}}$$

and

$$\text{Highway CO}_2 \text{ Value} = \text{GHG}_{\text{highway}}$$

Where  $\text{GHG}_{\text{urban}}$  and  $\text{GHG}_{\text{highway}}$  are measured in accordance with section G.12 of the “California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes” or the “California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes,” as applicable.

(C) *Fuel Cell Vehicle Calculations.* For each unique combination of model type and footprint value, a manufacturer shall calculate the City CO<sub>2</sub> Value and the Highway CO<sub>2</sub> Value using the following formulas:

$$\text{City CO}_2 = \text{GHG}_{\text{FCV}} = (9132 \text{ gCO}_2\text{e/kg H}_2) * H_{\text{FCV}} - G_{\text{upstream}}$$

and

Highway CO<sub>2</sub> =  $\text{GHG}_{\text{FCV}} = (9132 \text{ gCO}_2\text{e/kg H}_2) * H_{\text{FCV}} - G_{\text{upstream}}$  Where  $H_{\text{FCV}}$  means hydrogen consumption in kilograms of hydrogen per mile, measured for the applicable test cycle, in accordance with SAE J2572 (published October 2008), incorporated herein by reference.

(5) *Calculation of Fleet Average Carbon Dioxide Value.*

(A) For each unique combination of model type and footprint value, a manufacturer shall calculate a combined city/highway CO<sub>2</sub> exhaust emission value as follows:

$$0.55 \times \text{City CO}_2 \text{ Value} + 0.45 \times \text{Highway CO}_2 \text{ Value}$$



“City” CO<sub>2</sub> exhaust emissions shall be measured using the FTP test cycle (40 CFR, Part 86, Subpart B), as amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles.” “Highway” CO<sub>2</sub> exhaust emission shall be measured using the using the Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B).

(B) Each combined city/highway CO<sub>2</sub> exhaust emission, determined for each unique combination of model type and footprint value, shall be multiplied by the total production of that model type/footprint combination for the applicable model year.

(C) The resulting products shall be summed, and that sum shall be divided by the total production of passenger cars or total combined production of light-duty trucks and medium-duty passenger vehicles, as applicable, in that model year. The result shall be rounded to the nearest whole gram per mile. This result shall be the manufacturer's actual sales-weighted fleet average CO<sub>2</sub> value for the manufacturer's passenger car fleet or its combined light-duty truck and medium-duty passenger vehicle fleet, as applicable.

(D) For each model year, a manufacturer must demonstrate compliance with the fleet average requirements in section (a)(1) based on one of two options applicable throughout the model year, either:

Option 1: the total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles that are certified to the California exhaust emission standards in section 1961.3, and are produced and delivered for sale in California; or

Option 2: the total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles that are certified to the California exhaust emission standards in this section 1961.3, and are produced and delivered for sale in California, the District of Columbia, and all states that have adopted California's greenhouse gas emission standards for that model year pursuant to Section 177 of the federal Clean Air Act ([42 U.S.C. § 7507](#)).

1. A manufacturer that selects compliance Option 2 must notify the Executive Officer of that selection, in writing, prior to the start of the applicable model year or must comply with Option 1. Once a manufacturer has selected compliance Option 2, that selection applies unless the manufacturer selects Option 1 and notifies the Executive Officer of that selection in writing before the start of the applicable model year.

2. When a manufacturer is demonstrating compliance using Option 2 for a given model year, the term “in California” as used in section 1961.3 means California, the District of Columbia, and all states that have adopted California's greenhouse gas emission standards for that model year pursuant to Section 177 of the federal Clean Air Act ([42 U.S.C. § 7507](#)).

3. A manufacturer that selects compliance Option 2 must provide to the Executive Officer separate values for the number of vehicles in each model type and footprint value produced and delivered for sale in the District of Columbia and for each individual state within the average and the City CO<sub>2</sub> Value and Highway CO<sub>2</sub> exhaust emission values that apply to each model type and footprint value.

(6) *Credits for Reduction of Air Conditioning Direct Emissions.* Manufacturers may generate A/C Direct Emissions Credits by implementing specific air conditioning system technologies designed to reduce air conditioning direct emissions over the useful life of their vehicles. A manufacturer may only use an A/C Direct Emissions Credit for vehicles within a model type upon approval of the A/C Direct Emissions Credit for that model type by the Executive Officer. The conditions and requirements for obtaining approval of an A/C Direct Emissions Credit are described in (A) through (F), below.

(A) Applications for approval of an A/C Direct Emissions Credit must be organized by model type. The applications must also include:

- vehicle make and
- number of vehicles within the model type that will be equipped with the air conditioning system to which the leakage credit shall apply.

Separate applications must be submitted for any two configurations of an A/C system with differences other than dimensional variation.

(B) To obtain approval of the A/C Direct Emissions Credit, the manufacturer must demonstrate through an engineering evaluation that the A/C system under consideration reduces A/C direct emissions. The demonstration must include all of the following elements:

- the amount of A/C Direct Emissions Credit requested, in grams of CO<sub>2</sub>-equivalent per mile (gCO<sub>2</sub>e/mi);
- the calculations identified in section (a)(6)(C) justifying that credit amount;
- schematic of the A/C system;
- specifications of the system components with sufficient detail to allow reproduction of the calculation; and
- an explanation describing what efforts have been made to minimize the number of fittings and joints and to optimize the components in order to minimize leakage.

Calculated values must be carried to at least three significant figures throughout the calculations, and the final credit value must be rounded to one tenth of a gram of CO<sub>2</sub>-equivalent per mile (gCO<sub>2</sub>e/mi).

(C) The calculation of A/C Direct Emissions Credit depends on the refrigerant or type of system, and is specified in paragraphs 1, 2, and 3 of this subsection.

1. HFC-134a vapor compression systems

For A/C systems that use HFC-134a refrigerant, the A/C Direct Emissions Credit is calculated using the following formula:

$$A/C \text{ Direct Credit} = \text{Direct Credit Baseline} \times \left( 1 - \frac{LR}{\text{Avg } LR} \right)$$

Where:

*Direct Credit Baseline* = 12.6 gCO<sub>2</sub>e/mi for passenger cars;

*Direct Credit Baseline* = 15.6 gCO<sub>2</sub>e/mi for light-duty trucks and medium-duty passenger vehicles;

*Avg LR* = 16.6 grams/year for passenger cars;

*Avg LR* = 20.7 grams/year for light-duty trucks and medium-duty passenger vehicles;

*LR* = the larger of *SAE LR* or *Min LR*;

Where:

*SAE LR* = initial leak rate evaluated using SAE International's Surface Vehicle Standard SAE J2727 (Revised February 2012), incorporated by reference, herein;

*Min LR* = 8.3 grams/year for passenger car A/C systems with belt-driven compressors;

*Min LR* = 10.4 grams/year for light-duty truck and medium-duty passenger vehicle A/C systems with belt-driven compressors;

*Min LR* = 4.1 grams/year for passenger car A/C systems with electric compressors;

*Min LR* = 5.2 grams/year for light-duty truck and medium-duty passenger vehicle A/C systems with electric compressors.

Note: Initial leak rate is the rate of refrigerant leakage from a newly manufactured A/C system in grams of refrigerant per year. The Executive Officer may allow a manufacturer to use an updated version of SAE J2727 or an alternate method if s/he determines that the updated SAE J2727 or the alternate method provides more accurate estimates of the initial leak rate of A/C systems than the February 2012 version of SAE J2727 does.

## 2. Low-GWP vapor compression systems

For A/C systems that use a refrigerant having a GWP of 150 or less, the A/C Direct Emissions Credit shall be calculated using the following formula:

$$A/C \text{ Direct Credit} = \text{Low GWP Credit} - \text{High Leak Penalty}$$

Where:

$$\text{Low GWP Credit} = \text{Max Low GWP Credit} \times \left( 1 - \frac{GWP}{1,430} \right),$$

and

*High Leak Penalty*

$$= \begin{cases} \text{Max High Leak Penalty,} & \text{if SAE LR} > \text{Avg LR;} \\ \text{Max High Leak Penalty} \times \frac{\text{SAE LR} - \text{Min LR}}{\text{Avg LR} - \text{Min LR}}, & \text{if Min LR} < \text{SAE LR} \leq \text{Avg LR;} \\ 0, & \text{if SAE LR} \leq \text{Min LR.} \end{cases}$$

Where:

*Max Low GWP Credit* = 13.8 gCO<sub>2</sub>e/mi for passenger cars;

*Max Low GWP Credit* = 17.2 gCO<sub>2</sub>e/mi for light-duty trucks and medium-duty passenger vehicles;

*GWP* = the global warming potential of the refrigerant over a 100-year horizon, as specified in section (a)(6)(F);

*Max High Leak Penalty* = 1.8 gCO<sub>2</sub>e/mi for passenger cars;

*Max High Leak Penalty* = 2.1 gCO<sub>2</sub>e/mi for light-duty trucks and medium-duty passenger vehicles;

*Avg LR* = 13.1 g/yr for passenger cars;

*Avg LR* = 16.6 g/yr for light-duty trucks and medium-duty passenger vehicles;

and where:

*SAE LR* = initial leak rate evaluated using SAE International's Surface Vehicle Standard SAE J2727 (Revised February 2012);

*Min LR* = 8.3 g/yr for passenger cars;

*Min LR* = 10.4 g/yr for light-duty trucks and medium-duty passenger vehicles.

Note: Initial leak rate is the rate of refrigerant leakage from a newly manufactured A/C system in grams of refrigerant per year. The Executive Officer may allow a manufacturer to use an updated version of SAE J2727 or an alternate applicable test method if s/he finds the update or the alternate method provides more accurate estimates of the initial leak rate of A/C systems than the February 2012 version of SAE J2727 does.

### 3. Other A/C systems

For an A/C system that uses a technology other than vapor compression cycles, an A/C Direct Emissions Credit may be approved by the Executive Officer. The amount of credit requested must be based on demonstration of the reduction of A/C direct emissions of the technology using an engineering evaluation that includes verifiable laboratory test data, and cannot exceed 13.8 gCO<sub>2</sub>e/mi for passenger cars and 17.2 gCO<sub>2</sub>e/mi for light-duty trucks and medium-duty passenger vehicles.

(D) The total leakage reduction credits generated by the air conditioning system shall be calculated separately for passenger cars, and for light-duty trucks and medium-duty passenger vehicles, according to the following formula:

$$\text{Total Credits (g/mi)} = \text{A/C Direct Credit} \times \text{Production}$$

Where:

A/C Direct Credit is calculated as specified in subsection (a)(6)(C).

Production = The total number of passenger cars or light-duty trucks plus medium-duty passenger vehicles, whichever is applicable, produced and delivered for sale in California, with the air conditioning system to which the *A/D Direct Credit* value from subsection (a)(6)(C) applies.

(E) The results of subsection (a)(6)(D), rounded to the nearest whole gram per mile, shall be included in the manufacturer's credit/debit totals calculated in subsection (b)(1)(B).

(F) The following values for refrigerant global warming potential (GWP), or alternative values as determined by the Executive Officer, shall be used in the calculations of this subsection (a)(6). The Executive Officer shall determine values for refrigerants not included in this subsection (a)(6)(F) upon request by a manufacturer, based on findings by the Intergovernmental Panel on Climate Change (IPCC) or from other applicable research studies.

| <i>Refrigerant</i> | <i>GWP</i> |
|--------------------|------------|
| HFC-134a           | 1,430      |
| HFC-152a           | 124        |
| HFO-1234yf         | 4          |
| CO <sub>2</sub>    | 1          |

(7) *Credits for Improving Air Conditioning System Efficiency.* Manufacturers may generate CO<sub>2</sub> credits by implementing specific air conditioning system technologies designed to reduce air conditioning-related CO<sub>2</sub> emissions over the useful life of their passenger cars, light-duty trucks, and/or medium-duty passenger vehicles. Credits shall be calculated according to this subsection (a)(7) for each air conditioning system that the manufacturer is using to generate CO<sub>2</sub> credits. The eligibility requirements specified in subsection (a)(7)(E) must be met before an air conditioning system is allowed to generate credits.

(A) Air conditioning efficiency credits are available for the following technologies in the gram per mile amounts indicated for each vehicle category in the following table:

| <i>Air Conditioning Technology</i>   | <i>Passenger Cars (g/mi)</i> | <i>Light-Duty Trucks and Medium-Duty Passenger Vehicles (g/mi)</i> |
|--|------------------------------|--|
| Reduced reheat, with externally-controlled, variable-displacement compressor<br>(e.g. a compressor that controls displacement based on temperature setpoint and/or | 1.5                          | 2.2  |

cooling demand of the air conditioning system control settings inside the passenger compartment).

|   |     |     |
|---|-----|-----|
| Reduced reheat, with externally-controlled, fixed-displacement or pneumatic variable displacement compressor (e.g. a compressor that controls displacement based on conditions within, or internal to, the air conditioning system, such as head pressure, suction pressure, or evaporator outlet temperature). | 1.0 | 1.4 |
|---|-----|-----|

|  |     |     |
|--|-----|-----|
| Default to recirculated air with closed-loop control of the air supply (sensor feedback to control interior air quality) whenever the ambient temperature is 75 °F or higher: Air conditioning systems that operated with closed-loop control of the air supply at different temperatures may receive credits by submitting an engineering analysis to the Administrator for approval. | 1.5 | 2.2 |
|--|-----|-----|

|   |     |     |
|---|-----|-----|
| Default to recirculated air with open-loop control air supply (no sensor feedback) whenever the ambient temperature is 75 °F or higher. Air conditioning systems that operate with open-loop control of the air supply at different temperatures may receive credits by submitting an engineering analysis to the Administrator for approval. | 1.0 | 1.4 |
|---|-----|-----|

|   |     |     |
|---|-----|-----|
| Blower motor controls which limit wasted electrical energy (e.g. pulse width modulated power controller). | 0.8 | 1.1 |
|---|-----|-----|

|   |     |     |
|---|-----|-----|
| Internal heat exchanger (e.g. a device that transfers heat from the high-pressure, liquid-phase refrigerant entering the evaporator to the low-pressure, gas-phase refrigerant exiting the evaporator). | 1.0 | 1.4 |
|---|-----|-----|

|  |     |     |
|--|-----|-----|
| Improved condensers and/or evaporators with system analysis on the component(s) indicating a coefficient of performance improvement for the system of greater than 10% when compared to previous industry standard designs). | 1.0 | 1.4 |
|--|-----|-----|

|  |     |     |
|--|-----|-----|
| Oil separator. The manufacturer must submit an engineering analysis demonstrating the increased improvement of the system relative to the baseline design, where the baseline component for comparison is the version which a manufacturer most recently had in production on the same vehicle design or in a similar or related vehicle model. The characteristics of the baseline component shall be compared to the new component to demonstrate the improvement. | 0.5 | 0.7 |
|--|-----|-----|

(B) Air conditioning efficiency credits are determined on an air conditioning system basis. For each air conditioning system that is eligible for a credit based on the use of one or more of the items listed in subsection (a)(7)(A), the total credit value is the sum of the gram per mile values listed in subsection (a)(7)(A) for each item that applies to the air conditioning system. However, the total credit value for an air conditioning system may not be greater than 5.0 grams per mile for any passenger car or 7.2 grams per mile for any light-duty truck or medium-duty passenger vehicle.

(C) The total efficiency credits generated by an air conditioning system shall be calculated separately for passenger cars and for light-duty trucks plus medium-duty passenger vehicles according to the following formula:

$$\text{Total Credits (g/mi)} = \text{Credit} \times \text{Production}$$

Where:

Credit = the CO<sub>2</sub> efficiency credit value in grams per mile determined in subsection (a)(7)(B) or (a)(7)(E), whichever is applicable.

Production = The total number of passenger cars or light-duty trucks plus medium-duty passenger vehicles, whichever is applicable, produced and delivered for sale in California, with the air conditioning system to which to the efficiency credit value from subsection (a)(7)(B) applies.

(D) The results of subsection (a)(7)(C), rounded to the nearest whole gram per mile, shall be included in the manufacturer's credit/debit totals calculated in subsection (b)(1)(B).

(E) For the purposes of this subsection (a)(7)(E), the AC17 Test Procedure shall mean the AC17 Air Conditioning Efficiency Test Procedure set forth in 40 CFR § 86.167-17, incorporated in and amended by the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles."

1. For each air conditioning system selected by the manufacturer to generate air conditioning efficiency credits, the manufacturer shall perform the AC17 Test Procedure.

2. Using good engineering judgment, the manufacturer must select the vehicle configuration to be tested that is expected to result in the greatest increased CO<sub>2</sub> emissions as a result of the operation of the air conditioning system for which efficiency credits are being sought. If the air conditioning system is being installed in passenger cars, light-duty trucks, and medium-duty passenger vehicles, a separate determination of the quantity of credits for passenger cars and for light-duty trucks and medium-duty passenger vehicles must be made, but only one test vehicle is required to represent the air conditioning system, provided it represents the worst-case impact of the system on CO<sub>2</sub> emissions.

3. For each air conditioning system selected by the manufacturer to generate air conditioning efficiency credits, the manufacturer shall perform the AC17 Test Procedure according to the following requirements. Each air conditioning system shall be tested as follows:

- a. Perform the AC17 test on a vehicle that incorporates the air conditioning system with the credit-generating technologies.
- b. Perform the AC17 test on a vehicle which does not incorporate the credit-generating technologies. The tested vehicle must be similar to the vehicle tested under subsection (a)(7)(E)(3)a.
- c. Subtract the CO<sub>2</sub> emissions determined from testing under subsection (a)(7)(E)(3)a from the CO<sub>2</sub> emissions determined from testing under subsection (a)(7)(E)(3)b and round to the nearest 0.1 grams/mile. If the result is less than or equal to zero, the air conditioning system is not eligible to generate credits. If the result is greater than or equal to the total of the gram per mile credits determined under subsection (a)(7)(B), then the air conditioning system is eligible to generate the maximum allowable



value determined under subsection (a)(7)(B). If the result is greater than zero but less than the total of the gram per mile credits determined under subsection (a)(7)(B), then the air conditioning system is eligible to generate credits in the amount determined by subtracting the CO<sub>2</sub> emissions determined from testing under subsection (a)(7)(E)(3)a from the CO<sub>2</sub> emissions determined from testing under subsection (a)(7)(E)(3)b and rounding to the nearest 0.1 grams/mile.

4. For the first model year for which an air conditioning system is expected to generate credits, the manufacturer must select for testing the highest-selling subconfiguration within each vehicle platform that uses the air conditioning system. Credits may continue to be generated by the air conditioning system installed in a vehicle platform provided that:

- a. The air conditioning system components and/or control strategies do not change in any way that could be expected to cause a change in its efficiency;
- b. The vehicle platform does not change in design such that the changes could be expected to cause a change in the efficiency of the air conditioning system; and
- c. The manufacturer continues to test at least one sub-configuration within each platform using the air conditioning system, in each model year, until all sub-configurations within each platform have been tested.

5. Each air conditioning system must be tested and must meet the testing criteria in order to be allowed to generate credits. Using good engineering judgment, in the first model year for which an air conditioning system is expected to generate credits, the manufacturer must select for testing the highest-selling subconfiguration within each vehicle platform using the air conditioning system. Credits may continue to be generated by an air conditioning system in subsequent model years if the manufacturer continues to test at least one sub-configuration within each platform on annually, as long as the air conditioning system and vehicle platform do not change substantially.

(8) *Off-Cycle Credits*. Manufacturers may generate credits for CO<sub>2</sub>-reducing technologies where the CO<sub>2</sub> reduction benefit of the technology is not adequately captured on the FTP and/or the HWFET. These technologies must have a measurable, demonstrable, and verifiable real-world CO<sub>2</sub> reduction that occurs outside the conditions of the FTP and the HWFET. These optional credits are referred to as “off-cycle” credits. Off-cycle technologies used to generate emission credits are considered emission-related components subject to applicable requirements, and must be demonstrated to be effective for the full useful life of the vehicle. Unless the manufacturer demonstrates that the technology is not subject to in-use deterioration, the manufacturer must account for the deterioration in their analysis. The manufacturer must use one of the three options specified in this subsection (a)(8) to determine the CO<sub>2</sub> gram per mile credit applicable to an off-cycle technology. The manufacturer should notify the Executive Officer in its pre-model year report of its intention to generate any credits under this subsection (a)(8).

(A) *Credit available for certain off-cycle technologies.*

1. The manufacturer may generate a CO<sub>2</sub> gram/mile credit for certain technologies as specified in the following table, provided that each technology is applied to the minimum percentage of the manufacturer's total U.S. production of passenger cars, light-duty trucks, and medium-duty passenger vehicles specified in the table in each model year for which credit is claimed. Technology definitions are in subsection (e).



| <i>Off-Cycle Technology</i>       | <i>Passenger Cars (g/mi)</i> | <i>Light-Duty Trucks and Medium-Duty Passenger Vehicles (g/mi)</i> | <i>Minimum Total Percent of U.S. Production</i> |
|-----------------------------------|------------------------------|--|---|
| Active aerodynamics               | 0.6                          | 1.0  | 10  |
| High efficiency exterior lighting | 1.1                          | 1.1  | 10  |
| Engine heat recovery              | 0.7 per 100W of capacity     | 0.7 per 100W of capacity   | 10  |
| Engine start-stop (idle-off)      | 2.9                          | 4.5  | 10  |
| Active transmission warm-up       | 1.8                          | 1.8  | 10  |
| Active engine warm-up             | 1.8                          | 1.8  | 10  |
| Electric heater circulation pump  | 1.0                          | 1.5  | n/a   |
| Solar roof panels                 | 3.0                          | 3.0  | n/a   |
| Thermal control                   | ≤3.0                         | ≤4.3   | n/a   |

a. Credits may also be accrued for thermal control technologies as defined in subsection (e) in the amounts shown in the following table:

| <i>Thermal Control Technology</i> | <i>Credit Value: Passenger Cars (g/mi)</i> | <i>Credit Value: Light-Duty Trucks and Medium-Duty Passenger Vehicles (g/mi)</i> |
|-----------------------------------|--|--|
| Glass or glazing                  | ≤2.9                                       | ≤3.9   |
| Active seat ventilation           | 1.0  | 1.3  |
| Solar reflective paint            | 0.4  | 0.5  |
| Passive cabin ventilation         | 1.7  | 2.3  |
| Active cabin ventilation          | 2.1  | 2.8  |

b. The maximum credit allowed for thermal control technologies is limited to 3.0 g/mi for passenger cars and to 4.3 g/mi for light-duty trucks and medium-duty passenger vehicles. The maximum credit allowed for glass or glazing is limited to 2.9 g/mi for passenger cars and to 3.9 g/mi for light-duty trucks and medium-duty passenger vehicles.

c. Glass or glazing credits are calculated using the following equation:

$$\text{Credit} = \left[ Z \times \sum_{i=1}^n \frac{T_i \times G_i}{G} \right]$$

Where:

Credit = the total glass or glazing credits, in grams per mile, for a vehicle, which may not exceed 3.0 g/mi for passenger cars or 4.3 g/mi for light-duty trucks and medium-duty passenger vehicles;

Z = 0.3 for passenger cars and 0.4 for light-duty trucks and medium-duty passenger vehicles;

G<sub>i</sub> = the measured glass area of window i, in square meters and rounded to the nearest tenth;

G = the total glass area of the vehicle, in square meters and rounded to the nearest tenth;

T<sub>i</sub> = the estimated temperature reduction for the glass area of window i, determined using the following formula:

$$T_i = 0.3987 \times (T_{ts_{base}} - T_{ts_{new}})$$

Where:

T<sub>ts<sub>new</sub></sub> = the total solar transmittance of the glass, measured according to ISO 13837:2008, "Safety glazing materials -- Method for determination of solar transmittance" (incorporated by reference, herein).

T<sub>ts<sub>base</sub></sub> = 62 for the windshield, side-front, side-rear, rear-quarter, and backlite locations, and 40 for rooflite locations.

2. The maximum allowable decrease in the manufacturer's combined passenger car and light-duty truck plus medium-duty passenger vehicle fleet average CO<sub>2</sub> emissions attributable to use of the default credit values in subsection (a)(8)(A)1 is 10 grams per mile. If the total of the CO<sub>2</sub> g/mi credit values from the table in subsection (a)(8)(A)1 does not exceed 10 g/mi for any passenger automobile or light truck in a manufacturer's fleet, then the total off-cycle credits may be calculated according to subsection (a)(8)(D). If the total of the CO<sub>2</sub> g/mi credit values from the table in subsection (a)(8)(A)1 exceeds 10 g/mi for any passenger car, light-duty truck, or medium-duty passenger vehicle in a manufacturer's fleet, then the gram per mile decrease for the combined passenger car and light-duty truck plus medium-duty passenger vehicle fleet must be determined according to subsection (a)(8)(A)2.a to determine whether the 10 g/mi limitation has been exceeded.

a. Determine the gram per mile decrease for the combined passenger car and light-duty truck plus medium-duty passenger vehicle fleet using the following formula:

$$\text{Decrease} = \frac{\text{Credits} \times 1,000,000}{[(\text{Prod}_c \times 195,264) + (\text{Prod}_T \times 225,865)]}$$

Where:

Credits = The total of passenger car and light-duty truck plus medium-duty passenger vehicles credits, in Megagrams, determined according to subsection (a)(8)(D) and limited to those credits accrued by using the default gram per mile values in subsection (a)(8)(A)1.

$Prod_C$  = The number of passenger cars produced by the manufacturer and delivered for sale in the U.S.

$Prod_T$  = The number of light-duty trucks and medium-duty passenger vehicles produced by the manufacturer and delivered for sale in the U.S.

b. If the value determined in subsection (a)(8)(A)2.a is greater than 10 grams per mile, the total credits, in Megagrams, that may be accrued by a manufacturer using the default gram per mile values in subsection (a)(8)(A)1 shall be determined using the following formula:

$$\text{Credit (Megagrams)} = \frac{[10 \times ((Prod_C \times 195,264) + (Prod_T \times 225,865))]}{1,000,000}$$

Where:

$Prod_C$  = The number of passenger cars produced by the manufacturer and delivered for sale in the U.S.

$Prod_T$  = The number of light-duty trucks and medium-duty passenger vehicles produced by the manufacturer and delivered for sale in the U.S.

c. If the value determined in subsection (a)(8)(A)2.a is not greater than 10 grams per mile, then the credits that may be accrued by a manufacturer using the default gram per mile values in subsection (a)(8)(A)1 do not exceed the allowable limit, and total credits may be determined for each category of vehicles according to subsection (a)(8)(D).

d. If the value determined in subsection (a)(8)(A)2.a is greater than 10 grams per mile, then the combined passenger car and light-duty truck plus medium-duty passenger vehicle credits, in Megagrams, that may be accrued using the calculations in subsection (a)(8)(D) must not exceed the value determined in subsection (a)(8)(A)2.b. This limitation should generally be done by reducing the amount of credits attributable to the vehicle category that caused the limit to be exceeded such that the total value does not exceed the value determined in subsection (a)(8)(A)2.b.

3. In lieu of using the default gram per mile values specified in subsection (a)(8)(A)1 for specific technologies, a manufacturer may determine an alternative value for any of the specified technologies. An alternative value must be determined using one of the methods specified in subsection (a)(8)(B) or subsection (a)(8)(C).

(B) *Technology demonstration using EPA 5-cycle methodology.* To demonstrate an off-cycle technology and to determine a CO<sub>2</sub> credit using the EPA 5-cycle methodology, the manufacturer shall determine the off-cycle city/highway combined carbon-related exhaust emissions benefit by using the EPA 5-cycle methodology described in 40 CFR Part 600. Testing shall be performed on a representative vehicle, selected using good engineering judgment, for each model type for which the credit is being demonstrated. The emission benefit of a technology is determined by testing both with and without the off-cycle technology operating. Multiple off-cycle technologies may be demonstrated on a test vehicle. The manufacturer shall conduct the following steps and submit all test data to the Executive Officer.

1. Testing without the off-cycle technology installed and/or operating. Determine carbon-related exhaust emissions over the FTP, the HWFET, the US06, the SC03, and the cold temperature FTP test procedures according to the test procedure provisions specified in 40 CFR part 600 subpart B and using the calculation procedures specified in

§ 600.113-08 of this chapter. Run each of these tests a minimum of three times without the off-cycle technology installed and operating and average the per phase (bag) results for each test procedure. Calculate the 5-cycle weighted city/highway combined carbon-related exhaust emissions from the averaged per phase results, where the 5-cycle city value is weighted 55% and the 5-cycle highway value is weighted 45%. The resulting combined city/highway value is the baseline 5-cycle carbon-related exhaust emission value for the vehicle.

2. Testing with the off-cycle technology installed and/or operating. Determine carbon-related exhaust emissions over the US06, the SC03, and the cold temperature FTP test procedures according to the test procedure provisions specified in 40 CFR part 600 subpart B and using the calculation procedures specified in [40 CFR § 600.113-08](#). Run each of these tests a minimum of three times with the off-cycle technology installed and operating and average the per phase (bag) results for each test procedure. Calculate the 5-cycle weighted city/highway combined carbon-related exhaust emissions from the averaged per phase results, where the 5-cycle city value is weighted 55% and the 5-cycle highway value is weighted 45%. Use the averaged per phase results for the FTP and HWFET determined in subsection (a)(8)(B)1 for operation without the off-cycle technology in this calculation. The resulting combined city/highway value is the 5-cycle carbon-related exhaust emission value showing the off-cycle benefit of the technology but excluding any benefit of the technology on the FTP and HWFET.

3. Subtract the combined city/highway value determined in subsection (a)(8)(B)1 from the value determined in subsection (a)(8)(B)2. The result is the off-cycle benefit of the technology or technologies being evaluated. If this benefit is greater than or equal to three percent of the value determined in subsection (a)(8)(B)1 then the manufacturer may use this value, rounded to the nearest tenth of a gram per mile, to determine credits under subsection (a)(8)(C).

4. If the value calculated in subsection (a)(8)(B)3 is less than two percent of the value determined in subsection (a)(8)(B)1, then the manufacturer must repeat the testing required under subsections (a)(8)(B)1 and (a)(8)(B)2, except instead of running each test three times they shall run each test two additional times. The off-cycle benefit of the technology or technologies being evaluated shall be calculated as in subsection (a)(8)(B)3 using all the tests conducted under subsections (a)(8)(B)1, (a)(8)(B)2, and (a)(8)(B)4. If the value calculated in subsection (a)(8)(B)3 is less than two percent of the value determined in subsection (a)(8)(B)1, then the manufacturer must verify the emission reduction potential of the off-cycle technology or technologies using the EPA Vehicle Simulation Tool, and if the results support a credit value that is less than two percent of the value determined in subsection (a)(8)(B)1 then the manufacturer may use the off-cycle benefit of the technology or technologies calculated as in subsection (a)(8)(B)3 using all the tests conducted under subsections (a)(8)(B)1, (a)(8)(B)2, and (a)(8)(B)4, rounded to the nearest tenth of a gram per mile, to determine credits under subsection (a)(8)(C).

*(C) Review and approval process for off-cycle credits.*

*1. Initial steps required.*

a. A manufacturer requesting off-cycle credits under the provisions of subsection (a)(8)(B) must conduct the testing and/or simulation described in that paragraph.

b. A manufacturer requesting off-cycle credits under subsection (a)(8)(B) must conduct testing and/or prepare engineering analyses that demonstrate the in-use durability of the technology for the full useful life of the vehicle.

2. *Data and information requirements.* The manufacturer seeking off-cycle credits must submit an application for off-cycle credits determined under subsection (a)(8)(B). The application must contain the following:

- a. A detailed description of the off-cycle technology and how it functions to reduce CO<sub>2</sub> emissions under conditions not represented on the FTP and HWFET.
- b. A list of the vehicle model(s) which will be equipped with the technology.
- c. A detailed description of the test vehicles selected and an engineering analysis that supports the selection of those vehicles for testing.
- d. All testing and/or simulation data required under subsection (a)(8)(B), as applicable, plus any other data the manufacturer has considered in the analysis.
- e. An estimate of the off-cycle benefit by vehicle model and the fleet-wide benefit based on projected sales of vehicle models equipped with the technology.
- f. An engineering analysis and/or component durability testing data or whole vehicle testing data demonstrating the in-use durability of the off-cycle technology components.

3. *Review of the off-cycle credit application.* Upon receipt of an application from a manufacturer, the Executive Officer will do the following:

- a. Review the application for completeness and notify the manufacturer within 30 days if additional information is required.
- b. Review the data and information provided in the application to determine if the application supports the level of credits estimated by the manufacturer.

4. *Decision on off-cycle application.* The Executive Officer will notify the manufacturer in writing of its decision to approve or deny the application within 60 days of receiving a complete application, and if denied, the Executive Officer will provide the reasons for the denial.

(D) *Calculation of total off-cycle credits.* Total off-cycle credits in grams per mile of CO<sub>2</sub> (rounded to the nearest tenth of a gram per mile) shall be calculated separately for passenger cars and light-duty trucks plus medium-duty passenger vehicles according to the following formula:

$$\text{Total Credits (g/mi)} = \text{Credit} \times \text{Production}$$

Where:

Credit = the credit value in grams per mile determined in subsection (a)(8)(A) or subsection (a)(8)(B).

Production = The total number of passenger cars or light-duty trucks plus medium-duty passenger vehicles, whichever is applicable, produced and delivered for sale in California, produced with the off-cycle technology to which the credit value determined in subsection (a)(8)(A) or subsection (a)(8)(B) applies.

(9) *Credits for certain full-size pickup trucks.* Full-size pickup trucks may be eligible for additional credits based on the implementation of hybrid technologies or on exhaust emission performance, as described in this subsection (a)(9). Credits may be generated under either subsection (a)(9)(A) or subsection (a)(9)(B) for a qualifying pickup truck, but not both.

(A) *Credits for implementation of gasoline-electric hybrid technology.* Full-size pickup trucks that implement hybrid gasoline-electric technologies may be eligible for an additional credit under this subsection (a)(9)(A). Pickup trucks using the credits under this subsection (a)(9)(A) may not use the credits described in subsection (a)(9)(B).

1. Full-size pickup trucks that are mild hybrid gasoline-electric vehicles and that are produced in the 2017 through 2021 model years are eligible for a credit of 10 grams/mile. To receive this credit, the manufacturer must produce a quantity of mild hybrid full-size pickup trucks such that the proportion of production of such vehicles, when compared to the manufacturer's total production of full-size pickup trucks, is not less than the amount specified in the table below for each model year.

| <i>Model year</i> | <i>Required minimum percent of full-size pickup trucks</i> |
|-------------------|--|
| 2017              | 30%  |
| 2018              | 40%  |
| 2019              | 55%  |
| 2020              | 70%  |
| 2021              | 80%  |

2. Full-size pickup trucks that are strong hybrid gasoline-electric vehicles and that are produced in the 2017 through 2025 model years are eligible for a credit of 20 grams/mile. To receive this credit, the manufacturer must produce a quantity of strong hybrid full-size pickup trucks such that the proportion of production of such vehicles, when compared to the manufacturer's total production of full-size pickup trucks, is not less than 10 percent for each model year.

(B) *Credits for emission reduction performance.* 2017 through 2021 model year full-size pickup trucks that achieve carbon-related exhaust emission values below the applicable target value determined in subsection (a)(1)(B) may be eligible for an additional credit. Pickup trucks using the credits under this subsection (a)(9)(B) may not use the credits described in subsection (a)(9)(A).

1. Full-size pickup trucks that achieve carbon-related exhaust emissions less than or equal to the applicable target value determined in subsection (a)(1)(B) multiplied by 0.85 (rounded to the nearest gram per mile) and greater than the applicable target value determined in subsection (a)(1)(B) multiplied by 0.80 (rounded to the nearest gram per mile) in a model year are eligible for a credit of 10 grams/mile. A pickup truck that qualifies for this credit in a model year may claim this credit for subsequent model years through the 2021 model year if the carbon-related exhaust emissions of that pickup truck do not increase relative to the emissions in the model year in which the pickup truck qualified for the credit. To qualify for this credit in each model year, the manufacturer must produce a quantity of full-size pickup trucks that meet the emission requirements of this subsection (a)(9)(B)1 such that the proportion of production of such vehicles, when compared to the manufacturer's total production of full-size pickup trucks, is not less than the amount specified in the table below for each model year.

| <i>Model year</i> | <i>Required minimum percent of full-size pickup trucks</i> |
|-------------------|--|
| 2017              | 15%  |
| 2018              | 20%  |
| 2019              | 28%  |
| 2020              | 35%  |
| 2021              | 40%  |

2. Full-size pickup trucks that achieve carbon-related exhaust emissions less than or equal to the applicable target value determined in subsection (a)(1)(B) multiplied by 0.80 (rounded to the nearest gram per mile) in a model year are eligible for a credit of 20 grams/mile. A pickup truck that qualifies for this credit in a model year may claim this credit for a maximum of five subsequent model years if the carbon-related exhaust emissions of that pickup truck do not increase relative to the emissions in the model year in which the pickup truck first qualified for the credit. This credit may not be claimed in any model year after 2025. To qualify for this credit, the manufacturer must produce a quantity of full-size pickup trucks that meet the emission requirements of subsection (a)(9)(B)1 such that the proportion of production of such vehicles, when compared to the manufacturer's total production of full-size pickup trucks, is not less than 10 percent in each model year.

(C) *Calculation of total full-size pickup truck credits.* Total credits in grams per mile of CO<sub>2</sub> (rounded to the nearest whole gram per mile) shall be calculated for qualifying full-size pickup trucks according to the following formula:

$$\text{Total Credits (g/mi)} = (10 \times \text{Production}_{10}) + (20 \times \text{Production}_{20})$$

Where:

Production<sub>10</sub> = The total number of full-size pickup trucks produced and delivered for sale in California with a credit value of 10 grams per mile from subsection (a)(9)(A) and subsection (a)(9)(B).

Production<sub>20</sub> = The total number of full-size pickup trucks produced and delivered for sale in California with a credit value of 20 grams per mile from subsection (a)(9)(A) and subsection (a)(9)(B).



(10) *Greenhouse Gas In-Use Compliance Standards.* The in-use exhaust CO<sub>2</sub> emission standard shall be the combined city/highway exhaust emission value calculated according to the provisions of subsection (a)(5)(A) for the vehicle model type and footprint value multiplied by 1.1 and rounded to the nearest whole gram per mile. For vehicles that are capable of operating on multiple fuels, a separate value shall be determined for each fuel that the vehicle is capable of operating on. These standards apply to in-use testing performed by the manufacturer pursuant to the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.”

(11) *Mid-Term Review of the 2022 through 2025 MY Standards.* The Executive Officer shall conduct a mid-term review to re-evaluate the state of vehicle technology to determine whether any adjustments to the stringency of the 2022 through 2025 model year standards are appropriate. California's mid-term review will be coordinated with its planned full participation in EPA's mid-term evaluation as set forth in 40 CFR § 86.1818-12 (h).

(b) *Calculation of Greenhouse Gas Credits/Debits.* Credits that are earned as part of the 2012 through 2016 MY National greenhouse gas program shall not be applicable to California's greenhouse gas program. Debits that are earned as part of the 2012 through 2016 MY National greenhouse gas program shall not be applicable to California's greenhouse gas program.

(1) *Calculation of Greenhouse Gas Credits for Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles.*

(A) A manufacturer that achieves fleet average CO<sub>2</sub> values lower than the fleet average CO<sub>2</sub> requirement for the corresponding model year shall receive credits for each model year in units of g/mi. A manufacturer that achieves fleet average CO<sub>2</sub> values higher than the fleet average CO<sub>2</sub> requirement for the corresponding model year shall receive debits for each model year in units of g/mi. Manufacturers must calculate greenhouse gas credits and greenhouse gas debits separately for passenger cars and for combined light-duty trucks and medium-duty passenger vehicles as follows:

CO<sub>2</sub> Credits or Debits = (CO<sub>2</sub> Standard - Manufacturer's Fleet Average CO<sub>2</sub> Value) x (Total No. of Vehicles Produced and Delivered for Sale in California, Including ZEVs and HEVs).

Where:

CO<sub>2</sub> Standard = the applicable standard for the model year as determined in subsection (a)(1)(C);

Manufacturer's Fleet Average CO<sub>2</sub> Value = average calculated according to subsection (a)(5);

(B) A manufacturer's total Greenhouse Gas credits or debits generated in a model year shall be the sum of its CO<sub>2</sub> credits or debits and any of the following credits or debits, if applicable. The manufacturer shall calculate, maintain, and report Greenhouse Gas credits or debits separately for its passenger car fleet and for its light-duty truck plus medium-duty passenger vehicle fleet.

1. Air conditioning leakage credits earned according to the provisions of subsection (a)(6);
2. Air conditioning efficiency credits earned according to the provisions of subsection (a)(7);



3. Off-cycle technology credits earned according to the provisions of subsection (a)(8).

4. CO<sub>2</sub>-equivalent debits earned according to the provisions of subsection (a)(2)(D).

(2) A manufacturer with 2017 and subsequent model year fleet average Greenhouse Gas values greater than the fleet average CO<sub>2</sub> standard applicable for the corresponding model year shall receive debits in units of g/mi Greenhouse Gas equal to the amount of negative credits determined by the aforementioned equation. For the 2017 and subsequent model years, the total g/mi Greenhouse Gas credits or debits earned for passenger cars and for light-duty trucks and medium-duty passenger vehicles shall be summed together. The resulting amount shall constitute the g/mi Greenhouse Gas credits or debits accrued by the manufacturer for the model year.

*(3) Procedure for Offsetting Greenhouse Gas Debits.*

(A) A manufacturer shall equalize Greenhouse Gas emission debits by earning g/mi Greenhouse Gas emission credits in an amount equal to the g/mi Greenhouse Gas debits, or by submitting a commensurate amount of g/mi Greenhouse Gas credits to the Executive Officer that were earned previously or acquired from another manufacturer. A manufacturer shall equalize combined Greenhouse Gas debits for passenger cars, light-duty trucks, and medium-duty passenger vehicles within five model years after they are earned. If emission debits are not equalized within the specified time period, the manufacturer shall be subject to the [Health and Safety Code section 43211](#) civil penalty applicable to a manufacturer which sells a new motor vehicle that does not meet the applicable emission standards adopted by the state board. The cause of action shall be deemed to accrue when the emission debits are not equalized by the end of the specified time period. For a manufacturer demonstrating compliance under Option 2 in subsection (a)(5)(D), the emission debits that are subject to a civil penalty under [Health and Safety Code section 43211](#) shall be calculated separately for California, the District of Columbia, and each individual state that is included in the fleet average greenhouse gas requirements in subsection (a)(1). These emission debits shall be calculated for each individual state using the formula in subsections (b)(1) and (b)(2), except that the "Total No. of Vehicles Produced and Delivered for Sale in California, including ZEVs and HEVs" shall be calculated separately for the District of Columbia and each individual state.

For the purposes of [Health and Safety Code section 43211](#), the number of passenger cars not meeting the state board's emission standards shall be determined by dividing the total amount of g/mi Greenhouse Gas emission debits for the model year calculated for California by the g/mi Greenhouse Gas fleet average requirement for passenger car applicable for the model year in which the debits were first incurred. For the purposes of [Health and Safety Code section 43211](#), the number of light-duty trucks and medium-duty passenger vehicles not meeting the state board's emission standards shall be determined by dividing the total amount of g/mi Greenhouse Gas emission debits for the model year calculated for California by the g/mi Greenhouse Gas fleet average requirement for light-duty trucks and medium-duty passenger vehicles, applicable for the model year in which the debits were first incurred.

(B) Greenhouse Gas emission credits earned in the 2017 and subsequent model years shall retain full value through the fifth model year after they are earned, and will have no value if not used by the beginning of the sixth model year after being earned.

*(4) Use of Greenhouse Gas Emission Credits to Offset a Manufacturer's ZEV Obligations.*

(A) For a given model year, a manufacturer that has Greenhouse Gas credits remaining after equalizing all of its Greenhouse Gas debits may use those Greenhouse Gas credits to comply with its ZEV obligations for that model year, in accordance with the provisions set forth in the “California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes,” incorporated by reference in section 1962.2.

(B) Any Greenhouse Gas credits used by a manufacturer to comply with its ZEV obligations shall retain no value for the purposes of complying with this section 1961.3.

(5) Credits and debits that are earned as part of the 2012 through 2016 MY National Greenhouse Gas Program, shall have no value for the purpose of complying with this section 1961.3.

*(c) Optional Compliance with the 2017 through 2025 MY National Greenhouse Gas Program.*

The optional compliance approach provided by this section 1961.3 (c) shall not be available for 2021 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles if the “2017 through 2025 MY National Greenhouse Gas Program” is altered via a final rule published in the *Federal Register* subsequent to October 25, 2016.

For the 2017 through 2025 model years, a manufacturer may elect to demonstrate compliance with this section 1961.3 by demonstrating compliance with the 2017 through 2025 MY National greenhouse gas program as follows:

(1) A manufacturer that selects compliance with this option must notify the Executive Officer of that selection, in writing, prior to the start of the applicable model year or must comply with 1961.3 (a) and (b);

(2) The manufacturer must submit to ARB all data that it submits to EPA in accordance with the reporting requirements as required under [40 CFR § 86.1865-12](#), incorporated by reference in and amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” for demonstrating compliance with the 2017 through 2025 MY National greenhouse gas program and the EPA determination of compliance. All such data must be submitted within 30 days of receipt of the EPA determination of compliance for each model year that a manufacturer selects compliance with this option;

(3) The manufacturer must provide to the Executive Officer separate values for the number of vehicles in each model type and footprint value produced and delivered for sale in California, the District of Columbia, and each individual state that has adopted California's greenhouse gas emission standards for that model year pursuant to Section 177 of the federal Clean Air Act ([42 U.S.C. § 7507](#)), the applicable fleet average CO<sub>2</sub> standards for each of these model types and footprint values, the calculated fleet average CO<sub>2</sub> value for each of these model types and footprint values, and all values used in calculating the fleet average CO<sub>2</sub> values.

*(d) Test Procedures.*

The certification requirements and test procedures for determining compliance with the emission standards in this section are set forth in the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures

and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” as amended September 9, 2021, incorporated by reference herein. In the case of hybrid electric vehicles, the certification requirements and test procedures for determining compliance with the emission standards in this section are set forth in the “California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes,” incorporated by reference in section 1962.1, or the “California Exhaust Emission Standards and Test Procedures for 2018 through 2025 Model Year Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes,” as amended August 25, 2022, incorporated by reference herein.

(e) *Abbreviations.* The following abbreviations are used in this section 1961.3:

“CFR” means Code of Federal Regulations.

“CH<sub>4</sub>” means methane.

“CO<sub>2</sub>” means carbon dioxide.

“FTP” means Federal Test Procedure.

“GHG” means greenhouse gas.

“g/mi” means grams per mile.

“GVW” means gross vehicle weight.

“GVWR” means gross vehicle weight rating.

“GWP” means the global warming potential.

“HEV” means hybrid-electric vehicle.

“HWFET” means Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B).

“LDT” means light-duty truck.

“LVW” means loaded vehicle weight.

“MDPV” means medium-duty passenger vehicle.

“mg/mi” means milligrams per mile.

“MY” means model year.

“NHTSA” means National Highway Traffic Safety Administration.

“N<sub>2</sub>O” means nitrous oxide.

“ZEV” means zero-emission vehicle.

(f) *Definitions Specific to this Section.* The following definitions apply to this section 1961.3:

- (1) “A/C Direct Emissions” means any refrigerant released from a motor vehicle's air conditioning system.
- (2) “Active Aerodynamic Improvements” means technologies that are activated only at certain speeds to improve aerodynamic efficiency by a minimum of three percent, while preserving other vehicle attributes or functions.
- (3) “Active Cabin Ventilation” means devices that mechanically move heated air from the cabin interior to the exterior of the vehicle.
- (4) “Active Transmission Warmup” means a system that uses waste heat from the exhaust system to warm the transmission fluid to an operating temperature range quickly using a heat exchanger in the exhaust system, increasing the overall transmission efficiency by reducing parasitic losses associated with the transmission fluid, such as losses related to friction and fluid viscosity.
- (5) “Active Engine Warmup” means a system using waste heat from the exhaust system to warm up targeted parts of the engine so that it reduces engine friction losses and enables the closed-loop fuel control to activate more quickly. It allows a faster transition from cold operation to warm operation, decreasing CO<sub>2</sub> emissions.
- (6) “Active Seat Ventilation” means a device that draws air from the seating surface which is in contact with the occupant and exhausts it to a location away from the seat.
- (7) “Blower motor controls which limit waste energy” means a method of controlling fan and blower speeds that does not use resistive elements to decrease the voltage supplied to the motor.
- (8) “Default to recirculated air mode” means that the default position of the mechanism which controls the source of air supplied to the air conditioning system shall change from outside air to recirculated air when the operator or the automatic climate control system has engaged the air conditioning system (i.e., evaporator is removing heat), except under those conditions where dehumidification is required for visibility (i.e., defogger mode). In vehicles equipped with interior air quality sensors (e.g., humidity sensor, or carbon dioxide sensor), the controls may determine proper blend of air supply sources to maintain freshness of the cabin air and prevent fogging of windows while continuing to maximize the use of recirculated air. At any time, the vehicle operator may manually select the non-recirculated air setting during vehicle operation but the system must default to recirculated air mode on subsequent vehicle operations (i.e., next vehicle start). The climate control system may delay switching to recirculation mode until the interior air temperature is less than the outside air temperature, at which time the system must switch to recirculated air mode.
- (9) “Electric Heater Circulation Pump” means a pump system installed in a stop-start equipped vehicle or in a hybrid electric vehicle or plug-in hybrid electric vehicle that continues to circulate hot coolant through the heater core when the engine is stopped during a stop-start event. This system must be calibrated to keep the engine off for 1 minute or more when the external ambient temperature is 30 deg F.

(10) “Emergency Vehicle” means a motor vehicle manufactured primarily for use as an ambulance or combination ambulance-hearse or for use by the United States Government or a State or local government for law enforcement.

(11) “Engine Heat Recovery” means a system that captures heat that would otherwise be lost through the exhaust system or through the radiator and converting that heat to electrical energy that is used to meet the electrical requirements of the vehicle. Such a system must have a capacity of at least 100W to achieve 0.7 g/mi of credit. Every additional 100W of capacity will result in an additional 0.7 g/mi of credit.

(12) “Engine Start-Stop” means a technology which enables a vehicle to automatically turn off the engine when the vehicle comes to a rest and restart the engine when the driver applies pressure to the accelerator or releases the brake.

(13) “EPA Vehicle Simulation Tool” means the “EPA Vehicle Simulation Tool” as incorporated by reference in [40 CFR § 86.1](#) in the Notice of Proposed Rulemaking for EPA's 2017 and subsequent MY National Greenhouse Gas Program, as proposed at [76 Fed. Reg. 74854, 75357 \(December 1, 2011\)](#).

(14) “Executive Officer” means the Executive Officer of the California Air Resources Board.

(15) “Footprint” means the product of average track width (rounded to the nearest tenth of an inch) and wheelbase (measured in inches and rounded to the nearest tenth of an inch), divided by 144 and then rounded to the nearest tenth of a square foot, where the average track width is the average of the front and rear track widths, where each is measured in inches and rounded to the nearest tenth of an inch.

(16) “Federal Test Procedure” or “FTP” means 40 CFR, Part 86, Subpart B, as amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.”

(17) “Full-size pickup truck” means a light-duty truck that has a passenger compartment and an open cargo box and which meets the following specifications:

1. A minimum cargo bed width between the wheelhouses of 48 inches, measured as the minimum lateral distance between the limiting interferences (pass-through) of the wheelhouses. The measurement shall exclude the transitional arc, local protrusions, and depressions or pockets, if present. An open cargo box means a vehicle where the cargo box does not have a permanent roof or cover. Vehicles produced with detachable covers are considered “open” for the purposes of these criteria.

2. A minimum open cargo box length of 60 inches, where the length is defined by the lesser of the pickup bed length at the top of the body and the pickup bed length at the floor, where the length at the top of the body is defined as the longitudinal distance from the inside front of the pickup bed to the inside of the closed endgate as measured at the height of the top of the open pickup bed along vehicle centerline, and the length at the floor is defined as the longitudinal distance from the inside front of the pickup bed to the inside of the closed endgate as measured at the cargo floor surface along vehicle centerline.

3. A minimum towing capability of 5,000 pounds, where minimum towing capability is determined by subtracting the gross vehicle weight rating from the gross combined weight rating, or a minimum payload capability of 1,700 pounds, where minimum payload capability is determined by subtracting the curb weight from the gross vehicle weight rating.

(18) “Greenhouse Gas” means the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.

(19) “GWP” means the global warming potential of the refrigerant over a 100-year horizon, as specified in Intergovernmental Panel on Climate Change (IPCC) 2007: Climate Change 2007 -- The Physical Science Basis. S. Solomon et al. (editors), Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, Cambridge, UK and New York, NY, USA, ISBN 0-521-70596-7, or determined by ARB if such information is not available in the IPCC Fourth Assessment Report.

(20) “High Efficiency Exterior Lighting” means a lighting technology that, when installed on the vehicle, is expected to reduce the total electrical demand of the exterior lighting system by a minimum of 60 watts when compared to conventional lighting systems. To be eligible for this credit the high efficiency lighting must be installed in the following components: parking/position, front and rear turn signals, front and rear side markers, stop/brake lights (including the center-mounted location), taillights, backup/reverse lights, and license plate lighting.

(21) “Improved condensers and/or evaporators” means that the coefficient of performance (COP) of air conditioning system using improved evaporator and condenser designs is 10 percent higher, as determined using the bench test procedures described in SAE J2765 “Procedure for Measuring System COP of a Mobile Air Conditioning System on a Test Bench,” when compared to a system using standard, or prior model year, component designs. SAE J2765 is incorporated by reference herein. The manufacturer must submit an engineering analysis demonstrating the increased improvement of the system relative to the baseline design, where the baseline component(s) for comparison is the version which a manufacturer most recently had in production on the same vehicle design or in a similar or related vehicle model. The dimensional characteristics (e.g., tube configuration/thickness/spacing, and fin density) of the baseline component(s) shall be compared to the new component(s) to demonstrate the improvement in coefficient of performance.

(22) “Mild hybrid gasoline-electric vehicle” means a vehicle that has start/stop capability and regenerative braking capability, where the recaptured braking energy over the FTP is at least 15 percent but less than 75 percent of the total braking energy, where the percent of recaptured braking energy is measured and calculated according to 40 CFR § 600.108(g).

(23) “Model Type” means a unique combination of car line, basic engine, and transmission class.

(24) “2012 through 2016 MY National Greenhouse Gas Program” means the national program that applies to new 2012 through 2016 model year passenger cars, light-duty-trucks, and medium-duty passenger vehicles as adopted by the U.S. Environmental Protection Agency on April 1, 2010 (75 Fed. Reg. 25324, 25677 (May 7, 2010)).

(25) “2017 through 2025 MY National Greenhouse Gas Program” means the national program that applies to new 2017 through 2025 model year passenger cars, light-duty-trucks, and medium-duty passenger vehicles as adopted by the U.S. Environmental Protection Agency as codified in 40 CFR Part 86, Subpart S, except as follows: For model years 2021



through 2025, the “2017 through 2025 MY National Greenhouse Gas Program” means the national program that applies to new 2021 through 2025 model year passenger cars, light-duty-trucks, and medium-duty passenger vehicles as adopted by the U.S. Environmental Protection Agency as codified in 40 CFR Part 86, Subpart S, as last amended on October 25, 2016 that incorporates CFR sections 86.1818-12 (October 25, 2016), 86.1865-12 (October 25, 2016), 86.1866-12 (October 25, 2016), 86.1867-12 (October 25, 2016), 86.1868-12 (October 25, 2016), 86.1869-12 (October 25, 2016), 86.1870-12 (October 25, 2016), and 86.1871-12 (October 25, 2016).

(26) “Oil separator” means a mechanism that removes at least 50 percent of the oil entrained in the oil/refrigerant mixture exiting the compressor and returns it to the compressor housing or compressor inlet, or a compressor design that does not rely on the circulation of an oil/refrigerant mixture for lubrication.

(27) “Passive Cabin Ventilation” means ducts or devices which utilize convective airflow to move heated air from the cabin interior to the exterior of the vehicle.

(28) “Plug-in Hybrid Electric Vehicle” means “off-vehicle charge capable hybrid electric vehicle” as defined in the “California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes.”

(29) “Reduced reheat, with externally controlled, fixed-displacement or pneumatic variable displacement compressor” means a system in which the output of either compressor is controlled by cycling the compressor clutch off-and-on via an electronic signal, based on input from sensors (e.g., position or setpoint of interior temperature control, interior temperature, evaporator outlet air temperature, or refrigerant temperature) and air temperature at the outlet of the evaporator can be controlled to a level at 41°F, or higher.

(30) “Reduced reheat, with externally-controlled, variable displacement compressor” means a system in which compressor displacement is controlled via an electronic signal, based on input from sensors (e.g., position or setpoint of interior temperature control, interior temperature, evaporator outlet air temperature, or refrigerant temperature) and air temperature at the outlet of the evaporator can be controlled to a level at 41°F, or higher.

(31) “SC03” means the SC03 test cycle as set forth in the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles.”

(32) “Solar Reflective Paint” means a vehicle paint or surface coating which reflects at least 65 percent of the impinging infrared solar energy, as determined using ASTM standards E903-96 (Standard Test Method for Solar Absorptance, Reflectance, and Transmittance of Materials Using Integrating Spheres, DOI: 10.1520/E0903-96 (Withdrawn 2005)), E1918-06 (Standard Test Method for Measuring Solar Reflectance of Horizontal and Low-Sloped Surfaces in the Field, DOI: 10.1520/E1918-06), or C1549-09 (Standard Test Method for Determination of Solar Reflectance Near Ambient Temperature Using a Portable Solar Reflectometer, DOI: 10.1520/C1549-09). These ASTM standards are incorporated by reference, herein.

(33) “Solar Roof Panels” means the installation of solar panels on an electric vehicle or a plug-in hybrid electric vehicle such that the solar energy is used to provide energy to the electric drive system of the vehicle by charging the battery or directly providing power to the electric motor with the equivalent of at least 50 Watts of rated electricity output.

(34) “Strong hybrid gasoline-electric vehicle” means a vehicle that has start/stop capability and regenerative braking capability, where the recaptured braking energy over the Federal Test Procedure is at least 75 percent of the total braking energy, where the percent of recaptured braking energy is measured and calculated according to 40 CFR § 600.108(g).

(35) “Subconfiguration” means a unique combination within a vehicle configuration of equivalent test weight, road load horsepower, and any other operational characteristics or parameters which is accepted by USEPA.

(36) “US06” means the US06 test cycle as set forth in the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles.”

(37) “Worst-Case” means the vehicle configuration within each test group that is expected to have the highest CO<sub>2</sub>-equivalent value, as calculated in section (a)(5).

(g) Severability. Each provision of this section is severable, and in the event that any provision of this section is held to be invalid, the remainder of both this section and this article remains in full force and effect.

#### Credits

NOTE: Authority cited: [Sections 38550, 38566, 39500, 39600, 39601, 43013, 43018, 43018.5, 43101, 43104 and 43105, Health and Safety Code](#). Reference: [Sections 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106 and 43211, Health and Safety Code](#).

#### HISTORY

1. New section filed 8-8-2012; operative 8-8-2012 pursuant to [Government Code section 11343.4](#) (Register 2012, No. 32).
2. New subsection (a)(3)(C)4., amendment of subsections (a)(6)(C)1.-2 and (a)(7)(E), new subsection (a)(11), amendment of subsection (b)(4)(A), new subsections (c)-(c)(3), subsection relettering, amendment of newly designated subsections (f)(13) and (f)(17)1.-2., new subsection (f)(25) and subsection renumbering filed 12-31-2012; operative 12-31-2012 pursuant to [Government Code section 11343.4](#) (Register 2013, No. 1).
3. Amendment of section heading and subsections (a)(1)(A)1.-2., (a)(1)(B)1., (c) and (f)(25) and amendment of NOTE filed 12-12-2018; operative 12-12-2018 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2018, No. 50).
4. Amendment of subsection (d) filed 11-30-2022; operative 11-30-2022 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2022, No. 48).

This database is current through 12/30/22 Register 2022, No. 52.

Cal. Admin. Code tit. 13, § 1961.3, 13 CA ADC § 1961.3





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Proposed Regulation

## Barclays California Code of Regulations

## Title 13. Motor Vehicles (Refs &amp; Annos)

## Division 3. Air Resources Board

## Chapter 1. Motor Vehicle Pollution Control Devices

## Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)

## 13 CCR § 1962.2

§ 1962.2. Zero-Emission Vehicle Standards for 2018 through 2025 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.

## Currentness

(a) *ZEV Emission Standard.* The Executive Officer shall certify new 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles as ZEVs, vehicles that produce zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas, excluding emissions from air conditioning systems, under any possible operational modes or conditions. Model years 2026 and subsequent passenger cars, light-duty trucks, and medium-duty vehicles are certified under section 1962.4.

(b) *Percentage ZEV Requirements.*

(1) *General ZEV Credit Percentage Requirement.*

(A) *Basic Requirement.* The minimum ZEV credit percentage requirement for each manufacturer is listed in the table below as the percentage of the PCs and LDTs, produced by the manufacturer and delivered for sale in California that must be ZEVs, subject to the conditions in this subdivision 1962.2(b). The ZEV requirement will be based on the annual NMOG production report for the appropriate model year.

| <i>Model Year</i> | <i>Credit Percentage Requirement</i> |
|-------------------|--------------------------------------|
| 2018              | 4.5%                                 |
| 2019              | 7.0%                                 |
| 2020              | 9.5%                                 |
| 2021              | 12.0%                                |
| 2022              | 14.5%                                |
| 2023              | 17.0%                                |
| 2024              | 19.5%                                |

2025

22.0%

(B) *Calculating the Number of Vehicles to Which the Percentage ZEV Requirement is Applied.* For 2018 through 2025 model years, a manufacturer's production volume for the given model year will be based on the three-year average of the manufacturer's volume of PCs and LDTs, produced and delivered for sale in California in the prior second, third, and fourth model year [for example, 2019 model year ZEV requirements will be based on California production volume average of PCs and LDTs for the 2015 to 2017 model years]. This production averaging is used to determine ZEV requirements only, and has no effect on a manufacturer's size determination (eg. three-year average calculation method). In applying the ZEV requirement, a PC or LDT, that is produced by one manufacturer (e.g., Manufacturer A), but is marketed in California by another manufacturer (e.g., Manufacturer B) under the other manufacturer's (Manufacturer B) nameplate, shall be treated as having been produced by the marketing manufacturer (i.e., Manufacturer B).

1. [Reserved]

2. [Reserved]

3. A manufacturer may apply to the Executive Officer to be permitted to base its ZEV obligation on the number of PCs and LDTs, produced by the manufacturer and delivered for sale in California that same model year (ie, same model-year calculation method) as an alternative to the three-year averaging of prior year production described above, for up to two model years, total, between model year 2018 through 2025 model years. For the same model-year calculation method to be allowed, a manufacturer's application to the Executive Officer must show that their volume of PCs and LDTs produced and delivered for sale in California has decreased by at least 30 percent from the previous year due to circumstances that were unforeseeable and beyond their control.

(C) [Reserved]

(D) *Exclusion of ZEVs in Determining a Manufacturer's Sales Volume.* In calculating a manufacturer's applicable sales, using either method described in subdivision 1962.2(b)(1)(B), a manufacturer shall exclude the number of NEVs produced and delivered for sale in California by the manufacturer itself, or by a subsidiary in which the manufacturer has more than 33.4% percent ownership interest.

(2) *Requirements for Large Volume Manufacturers.*

(A) [Reserved]

(B) [Reserved]

(C) [Reserved]

(D) [Reserved]

(E) *Requirements for Large Volume Manufacturers in 2018 through 2025 Model Years.* LVMs must produce credits from ZEVs equal to minimum ZEV floor percentage requirement, as enumerated below. Manufacturers may fulfill the remaining ZEV requirement with credits from TZEVs, as enumerated below.

|                           | <i><b>Total ZEV</b></i>           | <i><b>Minimum</b></i>   |                     |
|---------------------------|-----------------------------------|-------------------------|---------------------|
| <i><b>Model Years</b></i> | <i><b>Percent Requirement</b></i> | <i><b>ZEV floor</b></i> | <i><b>TZEVs</b></i> |
| 2018                      | 4.5%                              | 2.0%                    | 2.5%                |
| 2019                      | 7.0%                              | 4.0%                    | 3.0%                |
| 2020                      | 9.5%                              | 6.0%                    | 3.5%                |
| 2021                      | 12.0%                             | 8.0%                    | 4.0%                |
| 2022                      | 14.5%                             | 10.0%                   | 4.5%                |
| 2023                      | 17.0%                             | 12.0%                   | 5.0%                |
| 2024                      | 19.5%                             | 14.0%                   | 5.5%                |
| 2025                      | 22.0%                             | 16.0%                   | 6.0%                |

(3) *Requirements for Intermediate Volume Manufacturers.* For 2018 through 2025 model years, an intermediate volume manufacturer may meet all of its ZEV credit percentage requirement, under subdivision 1962.2(b), with credits from TZEVE.

(4) *Requirements for Small Volume Manufacturers.* A small volume manufacturer is not required to meet the ZEV credit percentage requirements. However, a small volume manufacturer may earn, bank, market, and trade credits for the ZEVs and TZEVs it produces and delivers for sale in California.

(5) [Reserved]

(6) [Reserved]

(7) *Changes in Small Volume and Intermediate Volume Manufacturer Status in 2018 through 2025 Model Years.*

(A) *Increases in California Production Volume.* For 2018 through 2025 model years, if a small volume manufacturer's average California production volume exceeds 4,500 units of new PCs, LDTs, and MDVs based on the average number of vehicles produced and delivered for sale for the three previous consecutive model years (i.e., total production volume exceeds 13,500 vehicles in a three-year period), for three consecutive averages, the manufacturer shall no longer be treated as a small volume manufacturer, and must comply with the ZEV requirements for intermediate volume manufacturers beginning with the next model year after the last model year of the third consecutive average. For example, if (a small volume) Manufacturer A exceeds 4,500 PCs, LDTs, and MDVs for their 2018-2020, 2019-2021, and 2020-2022 model year averages, Manufacturer A would be subject to intermediate volume requirements starting in 2023 model year.

If an intermediate volume manufacturer's average California production volume exceeds 20,000 units of new PCs, LDTs, and MDVs in five consecutive model years based on the average number of vehicles produced and delivered for sale in the five associated sets of three model year averages that begin no sooner than the 2018 model year associated with the 2015 through 2017 three-year average (i.e., total production volume exceeds 60,000 vehicles in each of five consecutive three-year periods), the manufacturer shall no longer be treated as an intermediate volume manufacturer and shall comply with the ZEV requirements for large volume manufacturers beginning with the next model year after the model year corresponding to the fifth consecutive three-year average. For example, if (an intermediate volume) Manufacturer B exceeds 20,000 PCs, LDTs, and MDVs for its 2016--2018, 2017--2019, 2018--2020, 2019--2021, and 2020--2022 averages, as evidenced by its 2019 through 2023 model year reports, Manufacturer B would be subject to large volume manufacturer requirements starting in the 2024 model year.

If an intermediate volume manufacturer's average annual automotive-related global revenue for the 2018, 2019, or 2020 fiscal year, based upon the immediately prior and consecutive three fiscal years, is no greater than 40 billion dollars, then the three-model-year production volume average corresponding to that fiscal year will not apply to the five consecutive three-model-year production volume averages necessary for transition to large volume manufacturer requirements conditional upon the manufacturer submitting to the Executive Officer, in writing, a report that demonstrates the types and numbers of ZEVs and TZEVs the manufacturer will deliver to California subsequent to the 2020 fiscal year to meet the requirements specified in subdivision 1962.2(b)(1)(A). For example, assuming the production volumes described for Manufacturer B at the end of the preceding paragraph, and assuming Manufacturer B had automotive-related global revenue of 39 billion dollars in fiscal year 2019 and 41 billion dollars in fiscal year 2020, the 2016-2018 production volume average associated with fiscal year 2019 would not apply, but the 2017-2019 production volume average associated with fiscal year 2020 would apply. Thus, Manufacturer B would be subject to large volume manufacturer requirements starting in the 2025 model year.

Any new requirement described in this subdivision will begin with the next model year after the last model year of the third or fifth consecutive three-year average when a manufacturer ceases to be a small or intermediate volume manufacturer respectively in 2018 or subsequent years due to the aggregation requirements in majority ownership situations. The first of the consecutive three-year averages shall not precede the 2015 through 2017 three-year average.

(B) *Decreases in California Production Volume.* If a manufacturer's average California production volume falls below 4,500 or 20,000 units of new PCs, LDT1 and 2s, and MDVs, based on the average number of vehicles produced and delivered for sale for the three previous consecutive model years, for three consecutive averages, the manufacturer shall be treated as a small volume or intermediate volume manufacturer, as applicable, and shall be subject to the requirements for a small volume or intermediate volume manufacturer beginning with the next model year. For example, if Manufacturer C falls below 20,000 PCs, LDTs, and MDVs for its 2019-2021, 2020-2022, and 2021-2023 averages, Manufacturer C would be subject to IVM requirements starting in 2024 model year.

(C) *Calculating California Production Volume in Change of Ownership Situations.* Where a manufacturer experiences a change in ownership in a particular model year, the change will affect application of the aggregation requirements on the manufacturer starting with the next model year. When a manufacturer is simultaneously producing two model years of vehicles at the time of a change of ownership, the basis of determining next model year must be the earlier model year. The manufacturer's small or intermediate volume manufacturer status for the next model year shall be based on the average California production volume in the three previous consecutive model years of those manufacturers whose production volumes must be aggregated for that next model year. For example, where a change of ownership during the 2019 calendar year occurs and the manufacturer is producing both 2019 and 2020 model year vehicles resulting in a requirement that the production volume of Manufacturer A be aggregated with the production volume of Manufacturer B, Manufacturer A's status for the 2020 model year will be based on the production volumes of Manufacturers A and B in the 2017-2019 model years. Where the production volume of Manufacturer A must be aggregated with the production volumes of Manufacturers

B and C for the 2019 model year, and during that model year a change in ownership eliminates the requirement that Manufacturer B's production volume be aggregated with Manufacturer A's, Manufacturer A's status for the 2020 model year will be based on the production volumes of Manufacturers A and C in the 2017-2019 model years. In either case, the lead time provisions in subdivisions 1962.2(b)(7)(A) and (B) will apply.

(c) *Transitional Zero-Emission Vehicles (TZEV).*

(1) *Introduction.* This subdivision 1962.2(c) sets forth the criteria for identifying vehicles delivered for sale in California as TZEVs.

(2) *TZEV Requirements.* In order for a vehicle to be eligible to receive a ZEV allowance, the manufacturer must demonstrate compliance with all of the following requirements:

(A) *SULEV Standards.* Certify the vehicle to the 150,000-mile SULEV 20 or 30 exhaust emission standards for PCs and LDTs in subdivision 1961.2(a)(1). Bi-fuel, fuel flexible and dual-fuel vehicles must certify to the applicable 150,000-mile SULEV 20 or 30 exhaust emission standards when operating on both fuels. Manufacturers may certify 2018 and 2019 TZEVs to the 150,000-mile SULEV exhaust emission standards for PCs and LDTs in subdivision 1961(a)(1);

(B) *Evaporative Emissions.* Certify the vehicle to the evaporative emission standards in subdivision 1976(b)(1)(G) or 1976(b)(1)(E);

(C) *OBD.* Certify that the vehicle will meet the applicable on-board diagnostic requirements in sections 1968.1 or 1968.2, as applicable, for 150,000 miles; and

(D) *Extended Warranty.* Extend the performance and defects warranty period set forth in subdivisions 2037(b)(2) and 2038(b)(2) to 15 years or 150,000 miles, whichever occurs first except that the time period is to be 10 years for a zero-emission energy storage device used for traction power (such as a battery, ultracapacitor, or other electric storage device).

(3) *Allowances for TZEVs*

(A) *Zero-Emission Vehicle Miles Traveled TZEV Allowance Calculation.* A vehicle that meets the requirements of subdivision 1962.2(c)(2) and has zero-emission vehicle miles traveled (VMT), as defined by and calculated by the "California Exhaust Emission Standards and Test Procedures for 2018 through 2025 Model Year Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes," adopted March 22, 2012, last amended August 25, 2022, which is incorporated herein by reference, and measured as equivalent all electric range (EAER) capability will generate an allowance according to the following equation:

| <b><i>UDDS Test Cycle Range</i></b> |                         |
|-------------------------------------|-------------------------|
| <b><i>(AER)</i></b>                 | <b><i>Allowance</i></b> |
| < 10 all electric miles             | 0.00                    |

≥ 10 all electric miles

TZEV Credit = [(0.01) \* EAER + 0.30]

> 80 miles (credit cap)

1.10

1. *Allowance for US06 Capability.* TZEVs with US06 all electric range capability (AER) of at least 10 miles shall earn an additional 0.2 allowance. US06 test cycle range capability shall be determined in accordance with section G.7.5 of the “California Exhaust Emission Standards and Test Procedures for the 2018 through 2025 Model Year Zero-Emission Vehicles, and Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck, and Medium Duty Vehicle Classes,” adopted March 22, 2012, last amended August 25, 2022, which is incorporated herein by reference.

(B) [Reserved]

(C) [Reserved]

(D) [Reserved]

(E) *Credit for Hydrogen Internal Combustion Engine Vehicles.* A hydrogen internal combustion engine vehicle that meets the requirements of subdivision 1962.2(c)(2) and has a total range of at least 250 UDDS miles will earn an allowance of 0.75, which may be in addition to allowances earned in subdivision 1962.2(c)(3)(A), and subject to an overall credit cap of 1.25

(d) *Qualification for Credits From ZEVs.*

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) [Reserved]

(5) *Credits for 2018 through 2025 Model Year ZEVs.*

(A) *ZEV Credit Calculations.* Credits from a ZEV delivered for sale are based on the ZEV's UDDS all electric range, determined in accordance with the “California Exhaust Emission Standards and Test Procedures for the 2018 through 2025 Model Year Zero-Emission Vehicles, and Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck, and Medium Duty Vehicle Classes,” adopted March 22, 2012, last amended August 25, 2022, which is incorporated herein by reference, using the following equation:

$$\text{ZEV Credit} = (0.01) * (\text{UDDS range}) + 0.50$$

1. A ZEV with less than 50 miles UDDS range will receive zero credits.
2. Credits earned under this provision 1962.2(d)(5)(A) are be capped at 4 credits per ZEV.

(B) [Reserved]

(C) [Reserved]

(D) [Reserved]

(E) 1. *Counting Specified ZEVs Placed in Service in a Section 177 State and in California.* Large volume manufacturers and intermediate volume manufacturers with credits earned from hydrogen fuel cell vehicles that are certified to the California ZEV standards applicable for the ZEV's model year, delivered for sale and placed in service in California or in a Section 177 state, may be counted towards compliance in California and in all Section 177 states with the percentage ZEV requirements in subdivision 1962.2(b). The credits earned are multiplied by the ratio of a manufacturer's applicable production volume for a model year, as specified in subdivision 1962.2(b)(1)(B), in the state receiving credit to the manufacturer's applicable production volume as specified in subdivision 1962.2(b)(1)(B), for the same model year in California (hereafter, "proportional value"). Credits generated from ZEV placement in a Section 177 state will be earned at the proportional value in the Section 177 state, and earned in California at the full value specified in subdivision 1962.2(d)(5)(A).

2. *Optional Section 177 State Compliance Path.*

a. *Additional ZEV Requirements for Intermediate Volume Manufacturers.* Intermediate volume manufacturers that elect the optional Section 177 state compliance path must generate additional 2012 through 2025 model year ZEV credits, including no more than 50% Type 1.5x and Type IIx vehicle credits and excluding all NEV, Type 0 ZEV credits, and transportation system credits, in each Section 177 state to fulfill the following percentage requirements of their sales volume determined under subdivision 1962.2(b)(1)(B):

| <i>Model Years</i>                                | <i>Additional Section 177 State ZEV Requirements</i> |
|---|--|
| Two model years prior to transition to LVM status | 0.75%  |
| One model year prior to transition LVM status     | 1.50%  |

Subdivision 1962.2(d)(5)(E)1. and subdivision 1962.1(d)(5)(E) shall not apply to any ZEV credits used to meet an intermediate volume manufacturer's additional ZEV requirements for the appropriate model years as described in the table above under this subdivision 1962.2(d)(5)(E)2.a.

Intermediate volume manufacturers that choose to elect the optional Section 177 state compliance path must notify the Executive Officer and each Section 177 state in writing no later than September 1, 2016.



b. *ZEV and TZEV Percentages for Intermediate Volume Manufacturers.* Intermediate volume manufacturers that have fully complied with the optional Section 177 state compliance path requirements in subdivision 1962.1(d)(5)(E)3. or intend to comply or have fully complied with requirements in subdivision 1962.2(d)(5)(E)2.a. are allowed to meet their total ZEV percentage requirements specified in 1962.2(b) in each Section 177 state by utilizing subdivisions 1962.2(d)(5)(E)2.b.i and ii, below.

i. *Trading and Transferring ZEV and TZEV Credits within West Region Pool and East Region Pool.* Intermediate volume manufacturers may trade or transfer 2012 through 2025 model year ZEV and TZEV credits within the West Region pool to meet the requirements in subdivision 1962.2(d)(5)(E)2.a, and will incur no premium on their credit values. For example, for a manufacturer to make up a 2020 model year shortfall of 100 credits in State X, the manufacturer may transfer 100 (2018 through 2020 model year) ZEV credits from State Y, within the West Region pool. Intermediate volume manufacturers that have fully complied with the optional Section 177 state compliance path requirements in subdivision 1962.1(d)(5)(E)3. or intend to comply or have fully complied with requirements in subdivision 1962.2(d)(5)(E)2.a. may trade or transfer 2018 through 2025 model year ZEV and TZEV credits within the East Region pool to meet the requirements in subdivision 1962.2(b), and will incur no premium on their credit values. For example, for a manufacturer to make up a 2020 model year shortfall of 100 credits in State W, the manufacturer may transfer 100 (2018 through 2020 model year) ZEV credits from State Z, within the East Region pool.

ii. *Trading and Transferring ZEV and TZEV Credits between the West Region Pool and East Region Pool.* Intermediate volume manufacturers may trade or transfer 2012 and subsequent model year ZEV and TZEV credits to meet the requirements in subdivision 1962.2(b) between the West Region pool and the East Region pool; however, any credits traded will incur a premium of 30% of their value. For example, in order for a manufacturer to make up a 2020 model year shortfall of 100 credits in the West Region Pool, the manufacturer may transfer 130 (2018 through 2020 model year) credits from the East Region Pool. No credits may be traded or transferred to the East Region pool or West Region pool from a manufacturer's California ZEV bank, or from the East Region pool or West Region pool to a manufacturer's California ZEV bank.

c. *Reduced ZEV and TZEV Percentages for Large Volume Manufacturers.* Large volume manufacturers that have fully complied with the optional Section 177 state compliance path requirements in subdivision 1962.1(d)(5)(E)3. are allowed to meet ZEV percentage requirements and optional TZEV percentages reduced from the minimum ZEV floor percentages and TZEV percentages in subdivision 1962.2(b)(2)(E) in each Section 177 state equal to the following percentages of their sales volume determined under subdivision 1962.2(b)(1)(B):

| <i>ZEVs</i>   |             |             |             |             |
|---|-------------|-------------|-------------|-------------|
| <i>Model Year</i>   | <i>2018</i> | <i>2019</i> | <i>2020</i> | <i>2021</i> |
| Existing Minimum ZEV Floor                                | 2.00%       | 4.00%       | 6.00%       | 8.00%       |
| Section 177 State Adjustment for Optional Compliance Path | 62.5%       | 75%         | 87.5%       | 100%        |



|  |             |             |             |             |
|--|-------------|-------------|-------------|-------------|
| Minimum Section 177 State ZEV Requirement                      | 1.25%       | 3.00%       | 5.25%       | 8.00%       |
| <i>TZEVs</i>   |             |             |             |             |
| <i>Model Year</i>  | <i>2018</i> | <i>2019</i> | <i>2020</i> | <i>2021</i> |
| Existing TZEVE Percentage                                      | 2.50%       | 3.00%       | 3.50%       | 4.00%       |
| Section 177 State Adjustment for Optional Compliance Path      | 90.00%      | 100%        | 100%        | 100%        |
| New Section 177 State TZEVE Percentage                         | 2.25%       | 3.00%       | 3.50%       | 4.00%       |
| <i>Total Percent Requirement</i>                               |             |             |             |             |
| <i>Model Year</i>  | <i>2018</i> | <i>2019</i> | <i>2020</i> | <i>2021</i> |
| New Total Section 177 State Optional Requirements <sup>1</sup> | 3.50%       | 6.00%       | 8.75%       | 12.00%      |

<sup>1</sup> Intermediate volume manufacturers may meet these new total Section 177 State optional requirements entirely with TZEVE credits.

i. *Trading and Transferring ZEV and TZEVE Credits within West Region Pool and East Region Pool.* Manufacturers that have fully complied with the optional Section 177 state compliance path requirements in subdivision 1962.1(d)(5)(E)3. may trade or transfer 2012 through 2021 model year ZEV and TZEVE credits within the West Region pool to meet the requirements in subdivision 1962.2(d)(5)(E)2.c., and will incur no premium on their credit values. For example, for a manufacturer to make up a 2019 model year shortfall of 100 credits in State X, the manufacturer may transfer 100 (2012 through 2019 model year) ZEV credits from State Y, within the West Region pool. Manufacturers that have fully complied with the optional Section 177 state compliance path requirements in subdivision 1962.1(d)(5)(E)3. may trade or transfer 2012 through 2021 model year ZEV and TZEVE credits within the East Region pool to meet the requirements in subdivision 1962.2(d)(5)(E)2.c., and will incur no premium on their credit values. For example, for a manufacturer to make up a 2019 model year shortfall of 100 credits in State W, the manufacturer may transfer 100 (2012 through 2019 model year) ZEV credits from State Z, within the East Region pool.

ii. *Trading and Transferring ZEV and TZEVE Credits between the West Region Pool and East Region Pool.* Manufacturers that have fully complied with the optional Section 177 state compliance path requirements in subdivision 1962.1(d)(5)(E)3. may trade or transfer 2012 through 2021 model year ZEV and TZEVE credits to meet the requirements in subdivision 1962.2(d)(5)(E)2.c. between the West Region pool and the East Region pool; however, any credits traded will incur a premium of 30% of their value. For example, in order for a manufacturer to make up a 2019 model year shortfall of 100 credits in the West Region Pool, the manufacturer may transfer 130 (2012 through 2019 model year) credits from the East Region Pool. No credits may be traded or transferred to the

East Region pool or West Region pool from a manufacturer's California ZEV bank, or from the East Region pool or West Region pool to a manufacturer's California ZEV bank.

d. *Reporting Requirements.* On an annual basis, by May 1st of the calendar year following the close of a model year, each manufacturer that elects the optional Section 177 state compliance path under subdivision 1962.1(d)(5)(E)3., shall submit, in writing, to the Executive Officer and each Section 177 state a report, including an itemized list, that demonstrates the manufacturer has met the requirements of this subdivision 1962.2(d)(5)(E)2. within the East Region pool and within the West Region pool. The itemized list shall include the following:

i. The manufacturer's total applicable volume of PCs and LDTs delivered for sale in each Section 177 state within the regional pool, as determined under subdivision 1962.2(b)(1)(B).

ii. Make, model, credit earned, and Section 177 state where delivery for sale of TZEVs and ZEVs occurred to meet manufacturer's requirements under subdivision 1962.2(d)(5)(E)2.a, 2.b, and 2.c.

e. *Right to Request Vehicle Identification Numbers.* Upon request by the Executive Officer or a Section 177 state, each manufacturer that elects the optional Section 177 state compliance path under subdivision 1962.1(d)(5)(E)3. shall provide the vehicle identification numbers in the report required by subdivision 1962.2 (d)(5)(E)3.d.

f. *Failure to Meet Optional Section 177 State Compliance Path Requirements.* A large volume manufacturer that elects the optional Section 177 state compliance path under subdivision 1962.1(d)(5)(E)3., and does not meet the modified percentages in subdivision 1962.2(d)(5)(E)2.c. in a model year or make up their deficit within the specified time and with the specified credits allowed by subdivision 1962.2(g)(7)(A) in all Section 177 states of the applicable pool, shall be treated as subject to the total ZEV percentage requirements in section 1962.2(b) for all future model years in each Section 177 state, and the pooling provisions in subdivision 1962.2(d)(5)(E)2.c. shall not apply. Any future transfers of ZEV or TZEV credits between Section 177 states will be prohibited.

An intermediate volume manufacturer that elects the optional Section 177 state compliance path under subdivision 1962.1(d)(5)(E)3. or subdivision 1962.2(d)(5)(E)2. but delivers fewer ZEVs than required under subdivision 1962.2(d)(5)(E)2.a. shall make up the deficit by the end of the second model year in which the manufacturer is complying as a large volume manufacturer. For example, an intermediate volume manufacturer that becomes subject to large volume manufacturer requirements in 2019 model year must deliver the number of ZEVs required by subdivision 1962.2(d)(5)(E)2.a. by June 30, 2021. The pooling provisions in subdivision 1962.2(d)(5)(E)2.b.i and b.ii. shall not apply to an intermediate volume manufacturer that fails to provide the required amount of ZEVs under subdivision 1962.2(d)(5)(E)2.a. In that case, any future transfers of ZEV or TZEV credits within or between Section 177 states will be prohibited.

Penalties shall be calculated separately by each Section 177 state where a manufacturer fails to make up the ZEV deficits within the specified time and with the credits allowed by subdivision 1962.2(g)(7)(A).

g. The provisions of section 1962.2 shall apply to a manufacturer electing the optional Section 177 state compliance path, except as specifically modified by this subdivision 1962.2(d)(5)(E)2.

(F) *NEVs.* NEVs must meet the following to be eligible for 0.15 credits:

1. *Specifications*. A NEV earns credit when it meets all the following specifications:

a. *Acceleration*. The vehicle has a 0-20 mph acceleration of 6.0 seconds or less when operating with a payload of at least 332 pounds and starting with the battery at a 50% state of charge.

b. *Top Speed*. The vehicle has a minimum top speed of 20 mph when operating with a payload of at least 332 pounds and starting with the battery at a 50% state of charge. The vehicle's top speed shall not exceed 25 mph when tested in accordance with 49 CFR 571.500 (68 FR 43972, July 25, 2003).

c. *Constant Speed Range*. The vehicle has a minimum 25-mile range when operating at constant top speed with a payload of least 332 pounds and starting with the battery at 100% state of charge.

2. *Battery Requirement*. A NEV must be equipped with one or more sealed, maintenance-free batteries.

3. *Warranty Requirement*. A NEV drive train, including battery packs, must be covered for a period of at least 24 months. The first 6 months of the NEV warranty period must be covered by a full warranty; the remaining warranty period may be optional extended warranties (available for purchase) and may be prorated. If the extended warranty is prorated, the percentage of the battery pack's original value to be covered or refunded must be at least as high as the percentage of the prorated coverage period still remaining. For the purpose of this computation, the age of the battery pack must be expressed in intervals no larger than three months. Alternatively, a manufacturer may cover 50 percent of the original value of the battery pack for the full period of the extended warranty.

Prior to credit approval, the Executive Officer may request that the manufacturer provide copies of representative vehicle and battery warranties.

4. *NEV Charging Requirements*. A NEV must meet charging requirements specific in subdivision 1962.3(c).

(G) *BEVx*. A BEVx must meet the following in order to receive credit, based on its all electric UDDS Range, through subdivision 1962.2(d)(5)(A):

1. *Emissions Requirements*. BEVxs must meet all TZEV requirements, specified in subdivision 1962.2(c)(2)(A) through (D).

2. *APU Operation*. The vehicle's UDDS range after the APU first starts and enters "charge sustaining hybrid operation" must be less than or equal to the vehicle's UDDS all-electric test range prior to APU start. The vehicle's APU cannot start under any user-selectable driving mode unless the energy storage system used for traction power is fully depleted.

3. *Minimum Zero Emission Range Requirements*. BEVxs must have a minimum of 75 miles UDDS all electric range.

(e) [Reserved]

(f) [Reserved]

(g) *Generation and Use of Credits; Calculation of Penalties*

(1) *Introduction.* A manufacturer that produces and delivers for sale in California ZEVs or TZEVs in a given model year exceeding the manufacturer's ZEV requirement set forth in subdivision 1962.2(b) shall earn ZEV credits in accordance with this subdivision 1962.2(g).

(2) *ZEV Credit Calculations.*

(A) *Credits from ZEVs.* The amount of credits earned by a manufacturer in a given model year from ZEVs shall be expressed in units of credits, and shall be equal to the number of credits from ZEVs produced and delivered for sale in California that the manufacturer applies towards meeting the ZEV requirements, or, if applicable, requirements specified under subdivision 1962.2(d)(5)(E)1.a. for the model year subtracted from the number of ZEVs produced and delivered for sale in California by the manufacturer in the model year.

(B) *Credits from TZEVs.* The amount of credits earned by a manufacturer in a given model year from TZEVs shall be expressed in units of credits, and shall be equal to the total number of TZEVs produced and delivered for sale in California that the manufacturer applies towards meeting its ZEV requirement, or, if applicable, requirements specified under subdivision 1962.2(d)(5)(E)1.a. for the model year subtracted from the total number of ZEV allowances from TZEVs produced and delivered for sale in California by the manufacturer in the model year.

(C) *Separate Credit Accounts.* Credits from a manufacturer's ZEVs, BEVxs, TZEVs, and NEVs shall each be maintained in separate accounts.

(D) *Rounding Credits.* ZEV credits and debits shall be rounded to the nearest 1/100th only on the final credit and debit totals using the conventional rounding method.

(3) *ZEV Credits for MDVs.* Credits from ZEVs and TZEVs classified as MDVs, may be counted toward the ZEV requirement for PCs and LDTs, and included in the calculation of ZEV credits as specified in this subdivision 1962.2(g) if the manufacturer so specifies.

(4) *ZEV Credits for Advanced Technology Demonstration Programs.*

(A) [Reserved]

(B) *ZEVs.* ZEVs, including BEVxs, excluding NEVs, placed in a small or intermediate volume manufacturer's California advanced technology demonstration program for a period of two or more years, may earn ZEV credits even if the vehicle is not "delivered for sale" or registered with the California DMV. To earn such credits, the manufacturer must demonstrate to the reasonable satisfaction of the Executive Officer that the vehicles will be regularly used in applications appropriate

to evaluate issues related to safety, infrastructure, fuel specifications or public education, and that for 50 percent or more of the first two years of placement the vehicle will be operated in California. Such a vehicle is eligible to receive the same credit that it would have earned if delivered for sale, and for fuel cell vehicles, placed in service. To determine vehicle credit, the model year designation for a demonstration vehicle shall be consistent with the model year designation for conventional vehicles placed in the same timeframe. Manufacturers may earn credit for up to 25 vehicles per model, per Section 177 state, per year under this subdivision 1962.2(g)(4). A manufacturer's vehicles in excess of the 25-vehicle cap will not be eligible for advanced technology demonstration program credits.

(5) *ZEV Credits for Transportation Systems.*

(A) [Reserved]

(B) [Reserved]

(C) *Cap on Use of Transportation System Credits.*

1. *ZEVs.* Transportation system credits earned or allocated by ZEVs or BEVxs pursuant to subdivision 1962.1 (g)(5), not including any credits earned by the vehicle itself, may be used to satisfy up to one-tenth of a manufacturer's ZEV obligation in any given model year, and may be used to satisfy up to one-tenth of a manufacturer's ZEV obligation which must be met with ZEVs, as specified in subdivision 1962.2(b)(2)(E) or, if applicable, requirements specified under subdivision 1962.2(d)(5)(E)2.a.

2. *TZEVs.* Transportation system credits earned or allocated by TZEVs pursuant to subdivision 1962.1(g)(5), not including all credits earned by the vehicle itself, may be used to satisfy up to one-tenth of the portion of a manufacturer's ZEV obligation that may be met with TZEVs, or, if applicable, the portion of a manufacturer's obligation that may be met with TZEVs specified under subdivision 1962.2(d)(5)(E)2.a. in any given model year, but may only be used in the same manner as other credits earned by vehicles of that category.

(6) *Use of ZEV Credits.* A manufacturer may meet the ZEV requirements in a given model year by submitting to the Executive Officer a commensurate amount of ZEV credits, consistent with subdivision 1962.2(b). Credits in each of the categories may be used to meet the requirement for that category as well as the requirements for lesser credit earning ZEV categories, but shall not be used to meet the requirement for a greater credit earning ZEV category, except for discounted PZEV and AT PZEV credits. For example, credits produced from TZEVs may be used to comply with the portion of the requirement that may be met with credits from TZEV, but not with the portion that must be satisfied with credits from ZEVs. These credits may be earned previously by the manufacturer or acquired from another party.

(A) *Use of Discounted PZEV and AT PZEV Credits and NEV Credits.* For model years 2018 through 2025, discounted PZEV and AT PZEV credits, and NEV credits may be used to satisfy up to one-quarter of the portion of a manufacturer's requirement that can be met with credits from TZEVs, or, if applicable, the portion of a manufacturer's obligation that may be met with TZEVs specified under subdivision 1962.2(d)(5)(E)2.a. Intermediate volume manufacturers may fulfill their entire requirement with discounted PZEV and AT PZEV credits, and NEV credits in model years 2018 and 2019. These credits may be earned previously by the manufacturer or acquired from another party. Discounted PZEV and AT PZEV credits may no longer be used after model year 2025 compliance.

(B) *Use of BEVx Credits.* BEVx credits may be used to satisfy up to 50% of the portion of a manufacturer's requirement that must be met with ZEV credits.

(C) *GHG-ZEV Over Compliance Credits.*

1. *Application.* Manufacturers may apply to the Executive Officer, no later than December 31, 2016, to be eligible for this subdivision 1962.2(g)(6)(C), based on the following qualifications:

a. A manufacturer must have no model year 2017 compliance debits and no outstanding debits from all previous model year compliance with sections 1961.1 and 1961.3, or must have demonstrated compliance with the National greenhouse gas program as allowed by subdivisions 1961.1(a)(1)(A)(ii) and 1961.3(c); and

b. A manufacturer must have no model year 2017 compliance debits and no outstanding debits from all previous model year compliance with section 1962.1; and

c. A manufacturer must submit documentation of its projected product plans to show over compliance with the manufacturer's section 1961.3 requirements, or over compliance with National greenhouse gas program requirements as allowed by subdivision 1961.3(c), by at least 2.0 gCO<sub>2</sub>/mile in each model year through the entire 2018 through 2021 model year period, and its commitment to do so in each year.

2. *Credit Generation and Calculation.* Manufacturers must calculate their over compliance with section 1961.3 requirements, or over compliance with the National greenhouse gas program requirements as allowed by subdivision 1961.3(c), for model years 2018 through 2021 based on compliance with the previous model year standard. For example, to generate credits for this subdivision 1962.2(g)(6)(C) for model year 2018, manufacturers would calculate credits based on model year 2017 compliance with section 1961.3, or over compliance with the National greenhouse gas program as allowed by subdivision 1961.3(c).

a. At least 2.0 gCO<sub>2</sub>/mile over compliance with section 1961.3, or over compliance with the National greenhouse gas program as allowed by subdivision 1961.3(c), is required in each year and the following equation must be used to calculate the amount of ZEV credits earned for purposes of this subdivision 1962.2(g)(6)(C), and:

$$\frac{[(\text{Manufacturer US PC and LDT Sales}) \times (\text{gCO}_2/\text{mile below manufacturer GHG standard for a given model year})]}{(\text{Manufacturer GHG standard for a given model year})}$$

b. Credits earned under subdivision 1961.3(a)(9), or credits earned under 40 CFR, part 86, Subpart S, § 86.1866-12(a), § 86.1866-12(b), or § 86.1870-12, may not be included in the calculation of gCO<sub>2</sub>/mile credits for use in the above equation in subdivision a. All ZEVs included in the calculation above must include upstream emission values found in section 1961.3.



c. Banked gCO<sub>2</sub>/mile credits earned under sections 1961.1 and 1961.3, or under the National greenhouse gas program requirements as allowed by subdivision 1961.3(c), from previous model years or from other manufacturers may not be included in the calculation of gCO<sub>2</sub>/mile credits for use in the above equation in subdivision a.

3. *Use of GHG-ZEV Over Compliance Credits.* A manufacturer may use no more than the percentage enumerated in the table below to meet either the total ZEV requirement nor the portion of their ZEV requirement that must be met with ZEV credits, with credits earned under this subdivision 1962.2(g)(6)(C).

| 2018 | 2019 | 2020 | 2021 |
|------|------|------|------|
| 50%  | 50%  | 40%  | 30%  |

Credits earned in any given model year under this subdivision 1962.2(g)(6)(C) may only be used in the applicable model year and may not be used in any other model year.

gCO<sub>2</sub>/mile credits used to calculate GHG-ZEV over compliance credits under this provision must also be removed from the manufacturer's GHG compliance bank, and cannot be banked for future compliance toward section 1961.3, or towards compliance with the National greenhouse gas program requirements as allowed by subdivision 1961.3(c).

4. *Reporting Requirements.* Annually, manufacturers are required to submit calculations of credits for this subdivision 1962.2(g)(6)(C) for the model year, any remaining credits/debits from previous model years under section 1961.3 or under the National greenhouse gas program requirements as allowed by subdivision 1961.3(c), and projected credits/debits for future years through 2021 under section 1961.3 or under the National greenhouse gas program requirements as allowed by subdivision 1961.3(c) and this subdivision 1962.2(g)(6)(C).

If a manufacturer, who has been granted the ability to generate credits under this subdivision 1962.2(g)(6)(C), fails to over comply by at least 2.0 gCO<sub>2</sub>/mile in any one year, the manufacturer will be subject to the full ZEV requirements for the model year and future model years, and will not be able to earn credits for any other model year under this subdivision 1962.2(g)(6)(C).

(D) *Cap on Use of Specified Credits.* For 2018 through 2025 model year, manufacturers may only meet up to 50% of the portion of their requirement that must be met with credits from ZEVs from a combination of credits earned under subsections 1962.1(d)(5)(G), 1962.2 (d)(5)(G), 1962.1(g)(5), or 1962.2(g)(6)(C). Individual caps for credits earned under subsections 1962.1(d)(5)(G), 1962.2 (d)(5)(G), 1962.1(g)(5), or 1962.2(g)(6)(C) remain in effect in any given model year.

(7) *Requirement to Make Up a ZEV Deficit.*

(A) *General.* A manufacturer that produces and delivers for sale in California fewer ZEVs or TZEVs than required to meet its ZEV credit obligation in a given model year must make up the deficit by the next model year by submitting a commensurate amount of ZEV credits to the Executive Officer. An intermediate volume manufacturer may request, and the Executive Officer may grant, up to three consecutive model years to make up a credit deficit for a given model year provided that: (1) it has delivered for sale in California ZEVs or TZEVs within that model year, and (2) it submits a plan to the Executive Officer, as part of the request, demonstrating how it will make up the credit deficit within the requested time period. The amount of ZEV credits required to be submitted shall be calculated by [i] adding the number of credits from ZEVs produced and delivered for sale in California by the manufacturer for the model year to the number of credits from

TZEVs produced and delivered for sale in California by the manufacturer for the model year (for a LVM, not to exceed that permitted under subdivision 1962.2(b)(2)), and [ii] subtracting that total from the number of credits required to be produced and delivered for sale in California by the manufacturer for the model year. BEVx, TZEV, NEV, or converted AT PZEV and PZEV credits are not allowed to be used to fulfill a manufacturer's ZEV deficit; only credits from ZEVs may be used to fulfill a large volume manufacturer's ZEV deficit. Intermediate volume manufacturers may only use ZEV and TZEV credits to fulfill a manufacturer's ZEV deficit.

(8) *Penalty for Failure to Meet ZEV Requirements.* Any manufacturer that fails to produce and deliver for sale in California the required number of ZEVs and submit an appropriate amount of credits and does not make up ZEV deficits within the specified time allowed by subdivision 1962.2(g)(7)(A) shall be subject to the [Health and Safety Code section 43211](#) civil penalty applicable to a manufacturer that sells a new motor vehicle that does not meet the applicable emission standards adopted by the state board. The cause of action shall be deemed to accrue when the ZEV deficit is not balanced by the end of the specified time allowed by subdivision 1962.2(g)(7)(A). For the purposes of [Health and Safety Code section 43211](#), the number of vehicles not meeting the state board's standards shall be equal to the manufacturer's credit deficit, rounded to the nearest 1/100th, calculated according to the following equation, provided that the percentage of a manufacturer's ZEV requirement for a given model year that may be satisfied with TZEVs or credit from such vehicles may not exceed the percentages permitted under subdivision 1962.2(b)(2):

(No. of ZEV credits required to be generated for the model year)--(Amount of credits submitted for compliance for the model year)

(h) *Test Procedures.*

(1) *Determining Compliance.* The certification requirements and test procedures for determining compliance with this section 1962.2 are set forth in "California Exhaust Emission Standards and Test Procedures for 2018 through 2025 Model Year Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes," adopted March 22, 2012, and last amended August 25, 2022, which is incorporated herein by reference.

(2) *NEV Compliance.* The test procedures for determining compliance with subdivision 1962.1(d)(5)(F)1. are set forth in ETA-NTP002 (revision 3) "Implementation of SAE Standard J1666 May 93: Electric Vehicle Acceleration, Gradeability, and Deceleration Test Procedure" (December 1, 2004), and ETA-NTP004 (revision 3) "Electric Vehicle Constant Speed Range Tests" (February 1, 2008), both of which are incorporated by reference herein.

(i) *ZEV-Specific Definitions.* The following definitions apply to this section 1962.2.

(1) "Auxiliary power unit" or "APU" means any device that provides electrical or mechanical energy, meeting the requirements of subdivision 1962.2(c)(2), to a BEVx, after the zero emission range has been fully depleted. A fuel fired heater does not qualify under this definition for an APU.

(2) "Charge depletion range actual" or "Rcda" means the distance achieved by a hybrid electric vehicle on the urban driving cycle at the point when the zero-emission energy storage device is depleted of off-vehicle charge and regenerative braking derived energy.



- (3) “Conventional rounding method” means to increase the last digit to be retained when the following digit is five or greater. Retain the last digit as is when the following digit is four or less.
- (4) “Discounted PZEV and AT PZEV credits” means credits earned under section 1962 and 1962.1 by delivery for sale of PZEVs and AT PZEVs, discounted according to subdivision 1962.1(g)(2)(F).
- (5) “East Region pool” means the combination of Section 177 states east of the Mississippi River.
- (6) “Energy storage device” means a storage device able to provide the minimum power and energy storage capability to enable engine stop/start capability, traction boost, regenerative braking, and (nominal) charge sustaining mode driving capability. In the case of TZEVs, a minimum range threshold relative to certified, new-vehicle range capability is not specified or required.
- (7) “Hydrogen fuel cell vehicle” means a ZEV that is fueled primarily by hydrogen, but may also have off-vehicle charge capability.
- (8) “Hydrogen internal combustion engine vehicle” means a TZEV that is fueled exclusively by hydrogen.
- (9) “Majority ownership situations” means when one manufacturer owns another manufacturer more than 33.4%, for determination of size under CCR Section 1900.
- (10) “Manufacturer US PC and LDT Sales” means a manufacturer's total passenger car and light duty truck (up to 8,500 pounds loaded vehicle weight) sales sold in the United States of America in a given model year.
- (11) “Neighborhood electric vehicle” or “NEV” means a motor vehicle that meets the definition of Low-Speed Vehicle either in [section 385.5 of the Vehicle Code](#) or in [49 CFR 571.500](#) (as it existed on July 1, 2000), and is certified to zero-emission vehicle standards.
- (12) “Placed in service” means having been sold or leased to an end-user and not to a dealer or other distribution chain entity, and having been individually registered for on-road use by the California DMV.
- (13) “Proportional value” means the ratio of a manufacturer's California applicable sales volume to the manufacturer's Section 177 state applicable sales volume. In any given model year, the same applicable sales volume calculation method must be used to calculate proportional value.
- (14) “Range Extended Battery Electric Vehicle” or “BEVx” means a vehicle powered predominantly by a zero emission energy storage device, able to drive the vehicle for more than 75 all-electric miles, and also equipped with a backup APU, which does not operate until the energy storage device is fully depleted, and meeting requirements in subdivision 1962.2(d)(5)(G).

(15) “Section 177 state” means a state that is administering the California ZEV requirements pursuant to section 177 of the federal Clean Air Act (42 U.S.C. § 7507).

(16) “Transitional zero emission vehicle” or “TZEV” means a vehicle that meets all the criteria of subdivision 1962.2(c)(2) and qualifies for an allowance in subdivision 1962.2(c)(3)(A) or (E).

(17) “West Region pool” means the combination of Section 177 states west of the Mississippi River.

(18) “Zero emission vehicle” or “ZEV” means a vehicle that produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas under any possible operational modes or conditions.

(19) “Zero emission vehicle fuel” means a fuel that provides traction energy in on-road ZEVs. Examples of current technology ZEV fuels include electricity, hydrogen, and compressed air.

(j) *Abbreviations.* The following abbreviations are used in this section 1962.2:

“AER” means all-electric range.

“APU” means auxiliary power unit.

“AT PZEV” means advanced technology partial zero-emission vehicle.

“BEVx” means range extended battery electric vehicle.

“CFR” means Code of Federal Regulations.

“CO2” means carbon dioxide.

“DMV” means the California Department of Motor Vehicles.

“EAER” means equivalent all-electric range.

“FR” means Federal Register.

“g” means grams.

“HEV” means hybrid-electric vehicle.

“LDT” means light-duty truck.

“LDT1” means a light-truck with a loaded vehicle weight of 0-3750 pounds.

“LDT2” means a “LEV II” light-duty truck with a loaded vehicle weight of 3751 pounds to a gross vehicle weight of 8500 pounds, or a “LEV I” light-duty truck with a loaded vehicle weight of 3751-5750 pounds.

“LVM” means large volume manufacturer.

“MDV” means medium-duty vehicle.

“NMOG” means non-methane organic gases, or the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

“NEV” means neighborhood electric vehicle.

“NOx” means oxides of nitrogen.

“PC” means passenger car.

“PZEV” means partial allowance zero-emission vehicle

“SAE” means Society of Automotive Engineers.

“SULEV” means super-ultra-low-emission-vehicle.

“TZEV” means transitional zero emission vehicle.

“UDDS” means urban dynamometer driving cycle.

“US” means United States of America.

“US06” means the US06 Supplemental Federal Test Procedure

“VMT” means vehicle miles traveled.

“ZEV” means zero-emission vehicle.

(k) *Severability*. Each provision of this section is severable, and in the event that any provision of this section is held to be invalid, the remainder of this article remains in full force and effect.

(l) *Public Disclosure*. Records in the Board's possession for the vehicles subject to the requirements of section 1962.2 shall be subject to disclosure as public records as follows:

(1) Each manufacturer's annual production data and the corresponding credits per vehicle earned for ZEVs and TZEVs for the 2018 through 2025 model years; and

(2) Each manufacturer's annual credit balances for 2018 through 2025 model years for:

(A) Each type of vehicle: ZEV (minus NEV), BEVx, NEV, TZEV, and discounted PZEV and AT PZEV credits; and

(B) Advanced technology demonstration programs; and

(C) Transportation systems; and

(D) Credits earned under section 1962.2(d)(5)(A), including credits acquired from, or transferred to another party, and the parties themselves.

### Credits

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, 43101, 43104 and 43105, Health and Safety Code. Reference: Sections 38562, 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43205 and 43205.5, Health and Safety Code.

### HISTORY

1. Renumbering of former section 1962.1 to new section 1962.2 filed 3-18-2009; operative 4-17-2009 (Register 2009, No. 12).
2. Renumbering of former section 1962.2 to section 1962.3 and new section 1962.2 filed 8-7-2012; operative 8-7-2012 pursuant to Government Code section 11343.4 (Register 2012, No. 32).
3. Amendment of subsections (c), (c)(2)(B), (c)(3)(A), (c)(3)(A)1., (g)(6)(C)1.a.-c. and (g)(6)(C)2.-(g)(6)(C)4., repealer of subsection (g)(6)(C)5. and amendment of subsection (h)(1) filed 12-31-2012; operative 12-31-2012 pursuant to Government Code section 11343.4 (Register 2013, No. 1).
4. Amendment of subsections (c)(3)(A)-(c)(3)(A)1., subsections within subsections (d) and (g) and subsection (h)(1) filed 7-10-2014; operative 7-10-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 28).
5. Amendment of subsection (h)(1) filed 10-8-2015; operative 10-8-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 41).
6. Amendment of subsections (b)(7)-(b)(7)(A), (c)(3)(A)-(c)(3)(A)1., redesignation of former subsection (d)(5)(E) as new subsection (d)(5)(E)1., subsection renumbering, new subsections (d)(5)(E)2.a.-(d)(5)(E)2.b.ii., subsection relettering and amendment of newly designated subsections (d)(5)(E)c.-g., (g)(7)(A), (h)(1) and (i)(16) filed 10-12-2015; operative 1-1-2016 (Register 2015, No. 42).
7. Amendment of section heading and subsections (a), (b)(1)(A)-(B) and (b)(1)(B)3., (b)(3)(A)-(b)(1)(A)1. and (b)(2)(E), repealer of subsection (b)(2)(F) and amendment of subsections (b)(3), (b)(7)-(b)(7)(A), (c)(3)(A)-(c)(3)(A)1., (d)(5)-(d)(5)(A), (d)(5)(E)2.a., (d)(5)(E)2.b.i., (d)(5)(E)c.i.-ii, (g)(6)(D), (h)(1) and (i)(1)-(2) filed 11-30-2022; operative 11-30-2022 pursuant to Government Code section 11343.4(b)(3) (Register 2022, No. 48).

This database is current through 12/30/22 Register 2022, No. 52.

Cal. Admin. Code tit. 13, § 1962.2, 13 CA ADC § 1962.2

West's Annotated California Codes  
Public Resources Code (Refs & Annos)  
Division 15. Energy Conservation and Development (Refs & Annos)  
Chapter 8.3. State Vehicle Fleet (Refs & Annos)

West's Ann.Cal.Pub.Res.Code § 25722.8

§ 25722.8. Plan to improve use of alternative fuels, synthetic lubricants, and fuel-efficient vehicles;  
development, implementation and submittal to Legislature; progress report; use of alternatively fueled vehicles

Effective: January 1, 2015

[Currentness](#)

(a) On or before July 1, 2009, the Secretary of the Government Operations Agency, in consultation with the Department of General Services and other appropriate state agencies that maintain or purchase vehicles for the state fleet, including the campuses of the California State University, shall develop and implement, and submit to the Legislature and the Governor, a plan to improve the overall state fleet's use of alternative fuels, synthetic lubricants, and fuel-efficient vehicles by reducing or displacing the consumption of petroleum products by the state fleet when compared to the 2003 consumption level based on the following schedule:

(1) By January 1, 2012, a 10-percent reduction or displacement.

(2) By January 1, 2020, a 20-percent reduction or displacement.

(b) Beginning April 1, 2010, and annually thereafter, the Department of General Services shall prepare a progress report on meeting the goals specified in subdivision (a). The Department of General Services shall post the progress report on its Internet Web site.

(c)(1) The Department of General Services shall encourage, to the extent feasible, the operation of state alternatively fueled vehicles on the alternative fuel for which the vehicle is designed and the development of commercial infrastructure for alternative fuel pumps and charging stations at or near state vehicle fueling or parking sites.

(2) The Department of General Services shall work with other public agencies to incentivize and promote, to the extent feasible, state employee operation of alternatively fueled vehicles through preferential or reduced-cost parking, access to charging, or other means.

(3) For purposes of this subdivision, "alternatively fueled vehicles" means light-, medium-, and heavy-duty vehicles that reduce petroleum usage and related emissions by using advanced technologies and fuels, including, but not limited to, hybrid, plug-in hybrid, battery electric, natural gas, or fuel cell vehicles and including those vehicles described in [Section 5205.5 of the Vehicle Code](#).

### Credits

(Added by Stats.2007, c. 593 (A.B.236), § 3. Amended by Stats.2012, c. 728 (S.B.71), § 153; Stats.2012, c. 676 (A.B.2583), § 1; Stats.2013, c. 275 (A.B.1420), § 7; Stats.2014, c. 71 (S.B.1304), § 144, eff. Jan. 1, 2015.)

West's Ann. Cal. Pub. Res. Code § 25722.8, CA PUB RES § 25722.8

Current with all laws through Ch. 997 of 2022 Reg.Sess.

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