

UPDATED INFORMATIVE DIGEST

Sections Affected: Proposed amendments to title 13, California Code of Regulations (CCR), sections 1961 and 1961.1, and the “California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles” incorporated by reference in CCR, Title 13, Section 1961(d) (as last amended December 2, 2009).

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

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

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

Since Board approval in 2004, motor vehicle manufacturers and their trade associations have challenged the regulations in numerous federal and State court proceedings and have opposed California's request for a U.S. EPA waiver of preemption under the federal Clean Air Act to allow California to enforce its adopted standards. On May 19, 2009,

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

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

The subject amendments provide affected manufacturers with the ability to demonstrate compliance based on their fleet average of vehicles produced and delivered for sale in California, the District of Columbia, and in all states that have adopted and can enforce California's greenhouse gas emission standards, pursuant to section 177 of the Clean Air Act. The other states are: Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Due to the timing of their respective state's adoption, Maryland and New Mexico sales will not be part of this multi-state compliance averaging option until the 2011 model year. Arizona sales will also be part of the average beginning in the 2012 model year, should any manufacturer choose to continue complying using this proposed multi-state option rather than the planned U.S. EPA 2012-2016 model year standards compliance option that is the subject of a February 2010 ARB rulemaking. The amendments ensure that for each model year 2009 through 2011, under any combination of manufacturers exercising the new compliance option, the California new motor vehicle fleet will achieve equivalent or greater greenhouse gas emission reductions than under the existing regulations.

The May 2009 commitment letters also express California's commitment to review 2009 through 2011 model year certification requirements to either confirm that manufacturers may use data generated by federal Corporate Average Fuel Economy Program (CAFE) test procedures, vehicle selection, and other testing protocols – including substitution of federal data for data previously submitted to ARB – or to revise our regulations as necessary. The amendments address these flexibilities. They also make minor changes not directly tied to the May 2009 commitment letters by updating the incorporated federal test procedure sections referenced in the light-duty test procedures.

The Board's Regulatory Action: On September 24, 2009, the Board approved amendments to the regulations originally proposed in the Staff Report released on August 6, 2009, as described above, with direction to the Executive Officer to make modifications available for comment.

Subsequent to the hearing, staff identified one additional modification to the regulations that is needed to maintain consistency between the procedures for calculating greenhouse gas debits for passenger cars and light-duty trucks 0-3750 lbs. loaded vehicle weight (LVW) and those for calculating greenhouse gas debits for light-duty trucks 3751 lbs. LVW to 8500 lbs. GVW and medium-duty passenger vehicles. Also, staff identified a number of additional clarifying 15-day modifications to the regulations that were needed, based on comments received during the 45-day comment period and during subsequent discussions with manufacturers that indicate that some of the regulatory language, as contained in the 45-day notice, was being incorrectly interpreted. These 15-day changes were made available for public comment beginning on November 24, 2009 through December 9, 2009. The Executive Officer then adopted the amendments in their final form.