

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO NEW PASSENGER MOTOR VEHICLE GREENHOUSE GAS EMISSION STANDARDS FOR MODEL YEARS 2012-2016 TO PERMIT COMPLIANCE BASED ON FEDERAL GREENHOUSE GAS EMISSION STANDARDS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider proposed amendments to California's greenhouse gas emission standards that the Board approved in September 2004 pursuant to Assembly Bill 1493 (Pavley) (Stats. 2002, ch. 200.). These standards apply on a fleetwide basis to large-volume manufacturers of 2009 through 2016 model year new passenger motor vehicles certified for sale in California. The proposed amendments would allow manufacturer compliance with United States Environmental Protection Agency (U.S. EPA) standards to be deemed as compliant with California's standards for the 2012 through 2016 model years.

DATE: February 25, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., February 25, 2010, and may continue at 8:30 a.m., on February 26, 2010. This item may not be considered until February 26, 2010. Please consult the agenda for the meeting, which will be available at least 10 days before February 25, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to California Code of Regulations (CCR), title 13, sections 1961 and 1961.1, and to the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" incorporated by reference in CCR, title 13, section 1961(d) (as last amended May 2, 2008). Note: There are three other pending ARB rulemakings that also amend the incorporated test procedures; the text proposed with this notice identifies these other pending amendments.

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 emission levels for both passenger cars and light-duty trucks (PC/LDT1) and heavier light-duty trucks and medium-duty passenger vehicles (LDT2/MDPV). The standards are effective beginning in the 2009 model year and become more stringent each year through 2016. The levels are measured in grams per mile of carbon dioxide-equivalent emissions, targeting carbon dioxide (CO₂) as the main greenhouse pollutant and other greenhouse gases including refrigerants used in automotive air conditioners. Compliance is determined on a fleetwide basis, meaning that while each individual model can be above or below the standard, the average of a manufacturers' fleet must meet the standard or else the manufacturer incurs debits that must be equalized within five model years. Manufacturers can also accrue and trade credits between their PC/LDT1 and LDT2/MDPV 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 (Stats. 2006, ch. 488).

Since Board approval in 2004, motor vehicle manufacturers and their trade associations have challenged the regulations in numerous federal and State court proceedings and have opposed California's request for an U.S. EPA waiver of preemption under the federal Clean Air Act to allow California to enforce its adopted standards. On May 19, 2009, challenging parties, individual automakers, California, and the federal government committed to 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. 24007 (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, U.S. EPA granted California's waiver request for all model years 2009 through 2016. 74 Fed. Reg. 32744 (July 8, 2009).

For its part, California committed to: (1) revise its standards to allow manufacturers to demonstrate compliance with the fleet average greenhouse gas emission standard by “pooling” California and Section 177 State vehicle sales; (2) revise its standards for the 2012 through 2016 model year vehicles such that compliance with U.S. EPA-adopted greenhouse gas standards would serve as compliance with California’s standards; and (3) revise its standards as necessary to allow manufacturers to use emission data from the federal Corporate Average Fuel Economy (CAFE) program to demonstrate compliance with the Pavley regulations. Regulatory changes that implement the first and third commitments made by California as part of our May 2009 commitment letter were approved by the Board at a public hearing on September 24, 2009. The current proposed amendments to California’s passenger motor vehicle regulations implement our second commitment.

It is important to note that U.S. EPA has not yet issued a final rule for the 2012 through 2016 model year passenger vehicles. Consequently, these amendments are being proposed based on staff’s understanding of the September 28, 2009, Notice of Proposed Rulemaking (NPRM) for a joint rulemaking by U.S. EPA and the federal Department of Transportation that proposes a coordinated federal greenhouse gas and fuel economy program for light-duty vehicles, referred to as the National Program. 74 Fed. Reg. 49454 (September 28, 2009). This national rule is expected to be finalized by the end of March 2010. The subject proposed amendments to California’s regulations will be finalized by means of a 15-day notice once the national rule has been finalized.

California’s commitment to accept compliance with U.S. EPA-adopted greenhouse gas standards as compliance with California’s standards in the 2012 through 2016 model years has been and remains contingent on U.S. EPA adopting a final rule that preserves the benefits of the Pavley regulations. This will require that U.S. EPA adopt greenhouse gas standards that will achieve on average 250 grams/mile of CO₂ in model year 2016 across the light-duty fleet, as currently proposed in the NPRM. ARB believes that this fleet average would provide roughly equivalent greenhouse gas reductions in the 2016 model year from the California fleet currently subject to the AB 1493 (Pavley) regulations. Furthermore, while ARB understands the need for U.S. EPA to include compliance flexibilities in the final rule, it is important that such flexibilities do not significantly and demonstrably diminish the emission benefits of the National Program.

COMPARABLE FEDERAL REGULATIONS

There are currently no federal greenhouse gas emission standards for the subject new motor vehicles. However, as noted above, on September 28, 2009, an NPRM was issued by U.S. EPA and the federal Department of Transportation for a joint rulemaking that proposes a coordinated federal greenhouse gas emission reduction and fuel economy program for light-duty vehicles, beginning in the 2012 model year. This national rule is expected to be finalized by the end of March 2010.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Notice of Public Hearing to Consider Proposed Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards for Model Years 2012-2016 to Permit Compliance Based on Federal Greenhouse Gas Emission Standards."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on February 25, 2010.

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

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

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

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2010/ghgpv10/ghgpv10.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

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

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any

local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The proposal is not expected to negatively affect the cost of compliance for vehicle manufacturers that are subject to the requirements of the Pavley regulations. The proposed amendments provide manufacturers with the option of demonstrating compliance with California's regulations by demonstrating compliance with the National Program in the 2012 through 2016 model years. According to previous manufacturer statements, providing this National Program compliance option would reduce manufacturers' overall compliance costs. Manufacturers retain the option to comply with the regulations as they are currently written (i.e., manufacturers may elect to comply with the Pavley regulations in the 2012 through 2016 model years), in which case these amendments would produce no economic impacts.

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

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

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

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

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

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on January 11, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after January 11, 2010 and received **no later than 12:00 noon, February 24, 2010**, and must be addressed to the following:

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

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

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

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

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 38510, 38560, 38562, 38563, 39500, 39600, 39601, 43013, 43018, 43018.5, 43101, 43104, and 43105, Health and Safety Code. This action is proposed to implement, interpret and make specific sections 38501, 38510, 38560, 38562, 38563, 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204, 43205, and 43211, Health and Safety Code.

HEARING PROCEDURES

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

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

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

SPECIAL ACCOMMODATION REQUEST

To request a special accommodation or language needs for any of the following:

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, large print) or another language.
- A disability-related reasonable accommodation.

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

Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Porfavor llame a la oficina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto possible, pero no menos de 10 dias de trabajo antes del dia programado para la audencia del Consejo. TTY/TDD/ Personas que nesessitan este servicion pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: December 29, 2009

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