

State of California
AIR RESOURCES BOARD

Supplement to the
Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Responses

**PUBLIC HEARING TO CONSIDER THE “LEV II” AND “CAP 2000” AMENDMENTS
TO THE CALIFORNIA EXHAUST AND EVAPORATIVE EMISSION STANDARDS
AND TEST PROCEDURES FOR PASSENGER CARS, LIGHT-DUTY TRUCKS AND
MEDIUM-DUTY VEHICLES, AND TO THE EVAPORATIVE EMISSION
REQUIREMENTS FOR HEAVY-DUTY VEHICLES**

Public Hearing Date: November 5, 1998
Agenda Item No.: 98-12-1

Supplement Prepared October 27, 1999

1. The Air Resources Board (ARB) is authorized by sections 43013, 43018, 43101 and 43104 of the Health and Safety Code to adopt state motor vehicle emissions standards and test procedures that differ from corresponding federal regulations administered by the U.S. Environmental Protection Agency (U.S. EPA). However, ARB seeks to align its test and certification procedures with those of U.S. EPA to the extent feasible. This is reflected in the “CAP 2000” element of this rulemaking, in which the ARB procedures incorporate most of the federal procedures in 40 CFR Part 86, Subpart S.

2. Section 209(a) of the federal Clean Air Act (42 U.S.C. §7543(a)) preempts states from adopting or attempting to enforce emission standards for new motor vehicles. Section 209(b) of the Act (42 U.S.C. §7543(b)) directs U.S. EPA to waive preemption for California standards and accompanying enforcement procedures after notice and opportunity for a hearing unless specified findings are made.¹ It has been the consistent practice of ARB and U.S. EPA for over 25 years to have ARB first adopt new standards and then apply to U.S. EPA for a waiver. (see, e.g., 58 F.R. 4166 (January 13, 1993), U.S. EPA’s Notice announcing the agency’s issuance of a waiver for the ARB’s original low-emission vehicle regulations, which had been adopted by ARB July 12,

¹ The section 209(b) waiver provisions apply to any state which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or motor vehicle engines prior to March 30, 1966. (see §209(b)(1).) California is the only state that meets this condition. (S. Rep. No. 403, 90th Cong. 1st Sess., 532 (1967), *Motor and Equipment Manufacturers Association [MEMA] v. EPA*, 627 F.2d 1095, 1101 fn. 1 (D.C. Cir. 1979).)

1991 and became operative September 2, 1991.) The U.S. Court of Appeals for the D.C. Circuit has upheld section 209(b) waivers of preemption granted by U.S. EPA for California motor vehicle emission standards and accompanying enforcement procedures that the ARB had first adopted prior to application for a waiver (Motor Equipment and Manufacturers Association v. Nichols, 142 F.3d 449 (D.C. Cir., 1998)).

3. In the LEV II standards table in section 1961(a)(1) title 13, California Code of Regulations (page 22 of the Final Regulation Order), the 50,000 mile oxides of nitrogen (NO_x) standard for LEV Option 1 passenger cars and light-duty trucks is correctly shown as 0.07 gram per mile. This value was also shown in the original Proposed Regulation Order (p. 7) and the original "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (the 2001+ LDV/MDV TPs)" (p. E-4), the first 15-day Notice versions of the Final Regulation Order (p. 23) and the 2001+ LDV/MDV TPs (p. E-4) and the second 15-day Notice versions of the Final Regulation Order (p. 23) and the 2001+ LDV/MDV TPs (p. E-4). This standard was misidentified as 0.09 gram per mile on page 3 of Attachment I of the first Notice of Availability of Modified Text.

4. New section 1961(a)(6), title 13, California Code of Regulations, which identifies the "Highway NO_x Standard" for LEV II vehicles, provides that:

"Both the projected emissions and the HWFET standard shall be rounded in accordance with ASTM E29-67 to the nearest 0.1 g/mi (or 0.01 g/mi for vehicles certified to the 0.05 or 0.02 g/mi NO_x standards) before being compared."

The reference to rounding in accordance with ASTM E29-67 is identical to references where the highway NO_x standard appears in existing ARB regulations for 1988 and subsequent model vehicles (section 1960.1(d)(2) Note (3); 1960.1((e)(1) Note (3), 1960.1(f)(1) Note (3), 1960.1(f)(2) Note (3), 1960.1(g)(1) Note (5), and 1960.1(h)(2) Note (5), and 1960.1(h)(2) Note (5)). It makes clear how the rounding is to be conducted.