US EPA
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ENVIRONMENTAL PROTECTION AGENCY

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Determination of the Administrator (Evaporative Emission Waiver and Within-the-Scope Determination Regarding Model Year 1995 Enhanced Evaporative Emission Standards and Within-the Scope Determination for Small Volume Manufacturers)

I. Introduction

By this decision, issued under section 209(b) of the Clean Air Act, as amended ("Act") 42 U.S.C. § 7543(b), I am granting California's request for a waiver of Federal preemption to enforce amendments to its motor vehicle pollution control program that: (1) establish a supplemental evaporative emission test procedure; (2) aligns California's evaporative emission enhanced test procedures (enhanced test procedure) with federal test procedures; (3) applies the enhanced test procedure to the complete heavy medium-duty vehicle class (8,501-14,000 lbs., gross weight vehicle rating (GVWR)); and (4) establishes an amendment to the evaporative emission standard for the hot soak plus diurnal emissions test for medium-duty vehicles that have a GVWR of 6,001-8,500 lbs. and fuel tanks equal to or greater than 30 gallons from 2.0 to 2.5 grams per test. The standards and other requirements apply to 1996 to 1998 model years, including passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and engines, except petroleum-fueled diesel vehicles and vehicles fueled by natural gas.[1]

In addition, by today's decision, EPA is confirming that these amendments, as they apply to 1995 model year motor vehicles fall within-the-scope of a previous waiver of federal preemption for California's 1995 model year enhanced evaporative emission standards and test

[1] Title 13, California Code of Regulations (CCR), section 1976 and the incorporated "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles."

procedures.[2] Lastly, by today's decision, EPA is confirming California's determination that its amendments allowing ultra-small volume manufacturers to meet the above-noted evaporative emission requirements starting in model year 1999 instead of model year 1998 as previously required, falls within-the-scope of today's decision.

Section 209(a) of the Act, 42 U.S.C. Section 7543(a) provides:

> No State or political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial sale, titling (if any), or registration of such motor vehicle, motor vehicle, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and an opportunity for public hearing, to waive application of the prohibitions of section 209(a) for standards adopted by California if the State[3] determines that the standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards and if the Administrator does not find that: (A) the determination of the State is arbitrary and capricious; (B) the 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 202(a) of the Act. State standards and enforcement procedures are inconsistent with section 202(a) if there is inadequate lead time to permit development of the necessary technology, given the cost of compliance within that time, or if the Federal and

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[2] See 59 Fed. Reg. 46,978 (Sept.13, 1994) announcing EPA's previous waiver of federal preemption for California's 1995 model year evaporative emission standards and test procedures.

[3] California is the only State that meets section 209(b)(1) eligibility criteria for obtaining waivers. See, e.g., S. Rep. No. 90-403, at 632 (1967).

California test procedures impose inconsistent certification requirements.[4]

Once EPA provides California a waiver of Federal preemption for standards or enforcement procedures for a certain class of motor vehicles, California may adopt other conditions precedent to the initial retail sale, titling or registration of those vehicles without receiving an additional waiver of Federal preemption.[5]

Regarding enforcement procedures accompanying standards, I must grant the requested waiver unless I find that these procedures may cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standard promulgated pursuant to section 202(a), or unless the California and Federal certification test procedures are inconsistent.[6]

If California acts to amend a previously waived standard or accompanying enforcement procedure, the amendment may be considered within-the-scope of a previously granted waiver, provided that it does not affect California's determination that its standards are as protective of the public health and welfare as comparable Federal standards, raises no new issues regarding previous EPA waiver decisions and is consistent with section 202(a) of the Act.

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[4] See, e.g., 43 Fed. Reg. 32,182 (July 25, 1978). To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirements with the same test vehicle in the course of the same test.

[5] See 43 Fed. Reg. 36,679, 36,680 (Aug. 18, 1978).

[6] See, e.g., Motor and Equip. Mfrs. Ass'n., Inc. v. EPA ("MEMA"), 627 F.2d 1095, 1111-1114 (D.C. Cir. 1979), cert. denied, 446 U.S. 952 (1980); 43 Fed. Reg. 25,729 (Jun. 14, 1978).

While inconsistency with section 202(a) includes technological infeasibility, lead time, and cost, these aspects are typically relevant only with regards to standards. The aspect of consistency with 202(a) which is of primary applicability to enforcement procedures (especially test procedures) is test procedure consistency.

By letter dated August 21, 1995,[7] ("1995 Request Letter") the California Air Resources Board ("CARB") requested that the Administrator grant a waiver of Federal preemption for the amendments to its motor vehicle pollution control program that establish new enhanced evaporative emission standards and test procedures for 1996 and subsequent model years for passenger cars, light-duty trucks ("LDT"), medium-duty vehicles ("MDV"), and heavy-duty vehicles ("HDV"). The 1995 request letter also sought confirmation that CARB's amendments, as they apply to 1995 model year motor vehicles and engines, fall within-the-scope of a waiver previously granted to CARB for its 1995 model year enhanced evaporative emission standards and test procedures.[8] By letter dated October 16, 1996,[9] ("1996 Request Letter") CARB requested that its waiver request be limited to the 1996 thru 1998 model years. On February 28, 1997, EPA published a Notice of Opportunity for Public Hearing and request for comments regarding this waiver request.[10] EPA received no requests for a hearing; thus, EPA did not hold a hearing. The public comment period closed on April 30, 1997. By letter dated December 24, 1997,[11] ("1997 Request Letter) CARB requested that the Administrator confirm that its regulatory amendments that postpone for one model year the requirement that 1998 and subsequent model-year vehicles produced by ultra-small volume manufacturers (USVMs) meet the California enhanced evaporative emission requirements.

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[7] See Air Docket A-95-39 (Docket) entry II-B-1.

[8] EPA's notice announcing this 1995 model year only evaporative emission standards and test procedures waiver is found at 59 Fed. Reg. 46,978 (Sept. 13, 1994).

[9] See Docket entry II-B-11.

[10] 62 Fed. Reg. 9,185 (Feb. 28, 1997).

[11] See Docket entry II-B-12.

During the public comment period, EPA received three sets of comments from Lawrence Fafarman and one set of comments from CARB.[12] EPA did not receive any other comments.

Based on the record before me, I cannot make the findings required for a denial of a waiver under section 209(b)(1) of the Act and applicable case law with respect to the amendments to California's motor vehicle pollution control program. Therefore, EPA is granting California a waiver of Federal preemption for these amendments and is separately determining that CARB's amendments, as they apply to 1995 model year vehicles, are within-the-scope of a previous waiver.

II. Background

On November 20, 1991, CARB initially adopted enhanced evaporative emission standards and test procedures for 1995 and subsequent model year motor vehicles and engines. Specifically, these standards and test procedures included new motor vehicle certification standards for evaporative running losses and extended the durability requirements for evaporative emission control systems. Furthermore, these enhanced test procedures imposed an evaporative emission standard of 2.0 grams per test combined hot soak and diurnal emission (the number for the diurnal emission is from the highest of the three 24 hour periods that make up the real-time diurnal test), and a 0.05 gram per mile running loss test. CARB then requested by letter dated January 31, 1992, that EPA issue a waiver of federal preemption for these enhanced evaporative emission test procedures.

On March 24, 1993, EPA promulgated amendments to the federal evaporative emission test procedures, including the addition of a supplemental test procedure to assure an adequate evaporative canister purge. EPA's new evaporative emission test procedures are phased-in

[12] See Docket entries IV-A-1 to IV-A-4.

commencing with 1996 model year motor vehicles.

Following the issuance of EPA's rule, CARB, by a letter dated May 5, 1993, indicated that it would incorporate the federal supplemental test and align the CARB test procedures with the federal test procedures. By this letter CARB requested that its pending waiver request be limited to model year 1995 (CARB indicated that it would later submit a subsequent waiver request for 1996 and later model years). On September 13, 1994, EPA published a waiver covering CARB's 1995 model year vehicles and engines.[13]

In a letter dated August 21, 1995,[14] CARB notified EPA that on February 10, 1994, it had adopted amendments to its regulations establishing enhanced evaporative emission standards and test procedures applicable to 1995 and subsequent model years, including the supplemental test procedure noted above. In that letter, CARB requested that EPA issue a waiver for the amended evaporative emission standards and test procedures for 1996 and subsequent model years, and to also confirm that these amendments, as they apply to 1995 model year motor vehicles and engines, fall within-the-scope of EPA's waiver published on September 13, 1994.

In a letter dated October 16, 1996,[15] CARB requested that EPA limit its waiver of federal preemption determination to the 1996-1998 model years. By today's action, EPA will also consider CARB's within-the-scope request as it applies to 1995 model year. In a letter dated December 24, 1997,[16] CARB requested that EPA confirm that its regulatory amendments that

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[13] 59 Fed. Reg. 46,978 (Sept. 13, 1994).

[14] See Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated Aug. 21, 1995.

[15] See Letter from Michael P. Kenny, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated Oct. 16, 1996.

[16] See Docket entry II-B-12

postpone the California enhanced evaporative emission requirements applicable to USVMs from 1998 to 1999 are within-the-scope of the regulations and the associated waiver that is the subject of today's waiver determination. In today's decision EPA will first address the initial waiver request and then secondly examine the within-the-scope requests for the 1995 model year and the USVM provisions for the 1998 model year.

Due to CARB's request, EPA is limiting today's waiver decision to model years 1996 to 1998 (including the lack of any USVM requirements in 1998 as past of the within-the-scope determination) and the within-the-scope request for the 1995 model year.

III. CARB's Amendments to its Evaporative Emission Standards and Test Procedures

CARB's amendments do the following:

1. Incorporate the federal supplemental test procedure, which consists of vehicle preconditioning (including canister loading), the federal test procedure (FTP) exhaust test, a hot soak, and a two-day diurnal test (which simulates the conditions a parked car would experience).

2. With the exceptions noted below, the amendments align CARB's enhanced test procedures with the federal test procedures.

3. Establish test procedures applicable to CARB's heavy medium-duty vehicle class (8,501 -14,000 lbs., GVWR).

4. Establish evaporative emission standards (3.0 grams/test (hot soak plus diurnal)) for heavy medium-duty vehicle classes starting with the 1996 model year.

5. Amend the evaporative emission standards (hot soak plus diurnal) for medium-duty vehicles that have a GVWR of 6,001 to 8,500 lbs. and fuel tanks equal to or greater than 30 gallons to 2.5 grams/test.

6. For the 1995 model year, for which EPA had previously granted a waiver, incorporate the supplemental two-day diurnal test, and change the evaporative emission standards for hot soak and the diurnal emissions test for medium-duty vehicles (6,001-8,500 lbs. GVWR) with fuel tanks greater than 30 gallons from 2.0 to 2,5 grams, which is consistent with the federal standards.

7. Postpone by one model year, from 1998 to 1999, the enhanced evaporative emission requirements for any "ultra-small volume manufacturer"(USVM), defined as a manufacturer with California sales not exceeding 300 vehicles per model year, based on the average number of vehicles sold by the manufacturer in the previous three consecutive model years. There is a 100 percent compliance requirement beginning in 1999 model year for USVM that correlates with the federal requirement for SVMs (U.S. vehicle sales of less than 10,000 vehicles) of 100 percent compliance in 1999 model year. Neither California or federal requirements mandate any compliance by USVMs or SVMs before the 1999 model year.

For the 1996 to 1998 model years, the following are the major differences between CARB and the federal enhanced evaporative emission test procedures:

1. CARB's test procedure uses a maximum testing temperature of 105°F whereas the federal procedure specifies a maximum temperature of 95°F.

2. CARB procedure continues the use of Phase 2 reformulated gasoline certification test fuel with a RVP of 7.0 psi whereas the federal procedure uses test fuel of 9.0 psi.

3. CARB's correction factors continue to be different than federal regulations. Specifically, CARB's procedures allow manufacturers to conduct the running loss test at a lower initial fuel temperature than 105°F if the manufacturer can demonstrate that the fuel temperature would be less than 105°F on a 105°F ambient temperature day (federal procedure does not have this allowance).

4. CARB's cooling fans specifications in the running loss test continued to be more stringent than federal requirements; fans meeting California's specifications would also meet the federal standards.

5. The fuel vapor temperature during the running loss test must match the fuel vapor temperature profile within a tolerance of ± 5°F, which the federal regulation did not provide.

6. Finally, in the last 120 seconds of the running loss test, CARB's procedures continue to require that the fuel vapor temperature be controlled within ± 3°F of the fuel vapor temperature profile. The federal regulations tightened the fuel liquid temperature tolerance from ± 3°F to ± 2°F during the last 120 seconds rather than controlling the fuel vapor temperature.

IV. Standard and Burden of Proof in Waiver Proceedings

In Motor and Equip. Mfs. Ass'n. v. EPA,[17] ("MEMA I or MEMA"), the U.S. Court of Appeals for the District of Columbia determined that the Administrator's role in a section 209(b) proceeding is to:

> [C]onsider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended denial of the waiver.[18]

The court in MEMA I considered the standards of proof under section 209(b) for the two findings necessary to grant a waiver for an "accompanying enforcement procedure," the "protectiveness in the aggregate," and "consistency with section 202(a)" findings. The court instructed:

> The standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.[19]

The court upheld the Administrator's finding that to deny a waiver for an accompanying procedure "there must be clear and convincing evidence to show that the proposed procedures undermine the protectiveness of California's standards."[20] The court also noted that this standard of proof "accords with the Congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare . . ."[21]

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[17] 627 F.2d 1095 (D.C. Cir. 1979)

[18] Id. at 1122.

[19] Id.

[20] Id.

[21] Id.

With respect to the "consistency with section 202(a)" finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence.[22] Although MEMA I did not explicitly consider the standard of proof under section 209 concerning a waiver request for "standards," there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that:

> Even in the two areas reserved for Federal judgment by this legislation - existence of "compelling and extraordinary" conditions and whether the standards are technologically feasible - Congress intended that the standard of EPA review of the State decision be a narrow one.[23]

Congress' intent that EPA's review of California's decision making be narrow has led EPA in the past to reject arguments, whatever their apparent appeal, that are not specified as grounds for denying a waiver:

> The law makes clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, while the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[24]

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[22] Id. at 1122-23.

[23] 40 Fed. Reg. 23,102, 23,103 (May 28, 1975).

[24] 36 Fed. Reg. 17,458 (Aug. 31, 1971). Note that the "more stringent" standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that the California standards must be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. See MEMA, supra note 15 at 1116-1117 (holding that EPA properly declined to consider the alleged anti-competitive effect of California's in-use maintenance regulations).

Thus, my consideration of all the evidence submitted concerning this waiver decision is circumscribed by its relevance to those questions that I may consider under section 209.

Finally, it is important to remember that the burden of proof is squarely upon the opponents of the waiver:

> The language of the statute and its legislative history indicate that California's regulations, and California's determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing, and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[25]

V. Discussion

EPA did not receive comments objecting to the regulations for which California has requested a waiver (the evaporative emission standards and related regulations for model years 1996-1998). As discussed below, EPA cannot make any of the findings required to deny a request for a waiver under section 209(b) with respect to these regulations.

However, EPA received a series of comments from Lawrence Fafarman, who objects to EPA's grant of a waiver not as it relates to California's evaporative emission regulations, but as it may relate to another regulation (actually, a statutory provision) called the Vehicle Smog Impact Fee ("Fee"). Mr. Fafarman claims that, although California has not requested a waiver for the Fee, it is relevant to the decision before the Agency. Mr. Fafarman claims that the Fee violates the provisions of section 209(b) and several provisions of the U.S. Constitution. For the reasons provided below, EPA has found that it cannot deny California's waiver request based on the arguments raised by Mr. Fafarman.

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[25] See MEMA, supra note 15, at 1121.

1. California Does Not Need a Waiver to Enforce the Smog Impact Fee

The Smog Impact Fee is not subject to the preemption provisions of section 209(a), and thus California does not need to receive a waiver of preemption under section 209(b). As discussed in the letter sent to Mr. Fafarman by Robert Doyle of this office,[26] section 209(a) only preempts states from adopting and enforcing emission standards for new motor vehicles or from requiring "certification, inspection, or any other approval relating to the control for emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle . . . " "New motor vehicle" is defined under section 216 of the Act, in relevant part, as "a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser." Regulations applying solely to used motor vehicles are therefore not preempted under section 209(b).[27]

The Smog Impact Fee is a requirement that persons registering for the first time in California a vehicle that has already been registered in another state (i.e., a used vehicle) must pay a fee at the time of registration unless the vehicle is California-certified. Therefore, on its face, the Fee is not a regulation applicable to new motor vehicles, and thus it is not preempted.

Mr. Fafarman, however, states that the Fee is not related "to a used vehicle's emission level, but is *retroactively* based on a vehicle's new-car emissions-control certification . . . and all new federally-certified cars are thus subjected to an inescapable future liability to the fee."[28] EPA does not find this distinction to be relevant. The fact that California's Fee distinguishes

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[26] See IV-A-1, Exhibit B.

[27] See Allway Taxi, Inc. v. City of New York, 340 F. Supp. 1120 (S.D. N.Y. 1972), aff'd, 468 F.2d 624 (2d Cir. 1972) (holding that the Act does not preempt states or localities from implementing emission standards for the resale or registration of automobiles).

[28] IV-A-1 at 8.

vehicles certified to California regulations from vehicles certified to federal regulations does not change the principal point that the Fee is solely applicable to previously-registered, used vehicles. A vehicle does not become subject to the Fee until after it has been registered in one state and then re-registered in California. The vast majority of vehicles certified to federal standards therefore will never be subject to liability for the Fee, and those that are subject to the Fee are not subject until after they become used. Congress was clear when enacting section 209 that it did not intend states to be preempted from regulating the use of vehicles once they are no longer new.[29] Therefore, California is correct in its assertion that it is not required to request a waiver of preemption under section 209(b), because there is no preemption under section 209(a) to be waived.[30]

2. Relevance of the Vehicle Smog Impact Fee to Current Proceeding

In addition to the issue of whether California must receive a waiver for the Fee itself, Mr. Fafarman claims that the existence of the Fee should lead to EPA denying California's request for a waiver in this proceeding. Before going to the substance of Mr. Fafarman's arguments, EPA should first determine whether his arguments are relevant to the current proceeding. Generally, EPA does not review whether provisions of California's regulations that are not included in a waiver request are consistent with the provisions of section 209(b). Where California has failed to request a waiver for a regulation for which a waiver is required, the

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[29] See S. Rep. No. 403, 90th Cong., 1st Sess. 34 (1967), Allway Taxi, supra note 25, at 1125.

[30] Mr. Fafarman states that the Fee does not concern either the emissions or the use of used vehicles. Yet, since the Fee does not concern the emissions or use of new vehicles, the preemption provisions of section 209(a) do not apply, making it irrelevant to determine whether a waiver is appropriate under section 209(b).

regulation is unenforceable.[31] The most direct way for a person to challenge California's failure to request a waiver for a regulation is to resist California's attempt to enforce this regulation or, possibly, through a direct challenge against California in the appropriate court. EPA will not generally review regulations for which California has not requested a waiver, as information regarding such regulations is not before the Agency. EPA allows California to decide which regulations should be reviewed to receive a waiver under section 209(b), as it is California that bears the burden that its regulation will be unenforceable in the absence of a waiver.[32]

However, it is conceivable that a regulation for which California has not requested a waiver could affect California's new motor vehicle emission control program to the degree that failure to review such provision could lead to EPA granting a waiver that is not appropriate. In the extreme, for example, California could pass a regulation (or create an enforcement protocol) allowing manufacturers to receive a certificate of compliance by meeting standards from the 1975 model year, which would clearly affect the stringency of its program. If such a provision were brought to EPA's attention by a commentator during a waiver proceeding, EPA would not ignore the relevance of the regulation in its waiver decision, even if California had not included the provision in its waiver request. Therefore, if a commentator can prove that a provision not included in a waiver request so greatly affects California's new motor vehicle emission program as to cause the program to fail to meet the requirements of section 209(b), then EPA can include

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[31] As discussed above, enforcement of the Fee is not preempted under section 209(a), because it is not a regulation on new motor vehicles. Therefore, a waiver is not required.

[32] This is in keeping with EPA's limited role under section 209(b), and the admonition by Congress and the courts that EPA should not "overturn California's judgment lightly" or "substitute [its] judgment for that of the State." H.R. Rep. No. 95-294, 95th Cong; 1st Sess. 301-302 (1977); Ford v. EPA, 606 F. 2d 1293, 1297 n. 30 (1979).

a review of the provision in its analysis.[33] As discussed below, the Smog Impact Fee is not such a provision.

3. Criteria For Waiver Under Section 209(b)

A. Public Health and Welfare

Under section 209(b)(1)(A) of the Act, I cannot grant a waiver if I find that CARB was arbitrary and capricious in its determination that its State standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. CARB has made a determination that "the regulatory amendments approved herein will not cause the California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards."[34] Since the CARB Board's formal resolution, CARB has made two additional determinations that its evaporative emission standards are, in the aggregate, as protective of public health and welfare as applicable Federal standards. CARB based its determination on the following facts.

1. The only instances where California's standards differed from federal evaporative standards are where California's standards are more stringent (i.e. standards for heavy-duty vehicles above 14,000 lbs GVWR and for light-duty trucks with fuel tanks equal to or greater than 30 gallons, as well as the timing for the phase-in of the standards).

2. California's test procedures provide results that are roughly equivalent to federal test

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[33] This is particularly relevant under subsection 209(b)(1), which requires that EPA not grant a waiver if it finds that California was arbitrary and capricious in determining that its regulations are "in the aggregate" at least as protective as federal standards. Review of regulations for which California has not requested a waiver is less relevant (if at all relevant) under subsection (2), which deals with California's environmental need for its new motor vehicle program and, under subsection (3), which deals with the consistency of California's regulations with CAA section 202(a), because such regulations would be unenforceable.

[34] CARB Resolution 94-7, dated Feb. 10, 1994.

results. Though California allows fuel with lower Reid Vapor Pressure, it requires testing at higher temperature.

3. In the context of a broader comparison of overall California and federal new motor vehicle emissions standards, California's standards are more protective in the aggregate than comparable federal standards.[35]

[35] Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated August 21, 1995, at 7-8.

EPA has received no comment suggesting that CARB was arbitrary and capricious in its determination that the standards for which California has requested a waiver are in the aggregate at least as protective of public health and welfare.

However, Mr. Fafarman claims that the existence of the Fee shows that California's determination was arbitrary and capricious. Mr. Fafarman claims that there is no air quality benefit to the Fee and that the Fee actually impedes air quality improvement by diverting money from conversion of federally-certified cars to California cars. Mr. Fafarman claims that the Fee "shows that California's determination of its need for the waiver has been 'arbitrary and capricious.'"

Mr. Fafarman has not met his burden of showing that California was arbitrary and capricious in its determination that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. First, Mr. Fafarman's comment does not go to the issue of whether the Fee causes California's standards to be less protective of public health than Federal standards, but goes to whether California has shown a need for the waiver. This comment is not relevant to EPA's review under section 209(b)(1). EPA's role in determining whether California has been arbitrary and capricious is limited solely to the issue of whether California's standards are in the aggregate as stringent as federal standards. EPA may not use this first element of section 209(b) to engage in a free-flowing review of the basis for California's regulations. Congress intended that EPA's review of California's waiver requests be a limited one.

As Mr. Fafarman has not directed his comment to the critical issue for this element of the section 209(b), he has provided no evidence to show that California was arbitrary and capricious

in making its "in the aggregate" determination.[36] He provides no evidence to indicate that the existence of the Fee has such a clear negative effect on California's existing standards that it renders California's determination arbitrary and capricious. In fact, there is no evidence that the Fee has any negative effect on California's existing standards. Mr. Fafarman's comment speculates that California could conceivably go further than it currently goes in regulating used cars by requiring used federally-certified cars to be retrofitted to meet California's standards. However, EPA's section 209(b) review is not a license for the Agency to engage in detailed regulatory review regarding the best approaches California may take in reducing vehicle emissions.[37] In any case, whether California can do more, Mr. Fafarman provides no argument that the regulations California currently has in place are not in the aggregate at least as protective of public health as federal standards. He therefore has not met his burden under section 209(b)(1).

Therefore, based on the record before me, I cannot find that CARB's determination that its State standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious.

B. Compelling and Extraordinary Conditions

Under section 209(b)(1)(B) of the Act, I cannot grant a waiver if I find that California "does not need such State standards to meet compelling and extraordinary conditions. . . ." Under this criterion, Congress has restricted EPA's inquiry to whether California needs its own motor vehicle pollution control program to meet compelling and extraordinary conditions, and

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[36] See MEMA, supra note 15, at 1122-1127.

[37] See MEMA, supra note 15, at 1110, citing H.R. Rep. No. 95-294, at 301-302 (1977) ("The Committee amendment is intended ... to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare."

not whether any given standards are necessary to meet such conditions.[38] As to the need for the particular standards that are the subject of this decision, California is entrusted with the power to select "the best means to protect the health of its citizens and the public welfare."[39]

California, in its initial waiver request letter, states that California needs its own motor vehicle program to meet serious air pollution problems unique to the state.[40] CARB also states that the Administrator has previously and consistently recognized this need when granting waivers for motor vehicles under section 209(b) of the Act. CARB states that the relevant inquiry under this criterion is whether California needs its own emission control program to meet compelling and extraordinary conditions, not whether any given standard is necessary to meet such conditions.[41]

Because it determined that California was entitled to exercise broad discretion in its choice of mobile source air pollution control methods, Congress acted to ensure that EPA's review of California's decision making be narrow. From the outset, EPA has consistently complied with Congressional intent. For example, in a 1971 decision, (then) Administrator Russell Train said:

> The law makes it clear that the waiver requests cannot be denied unless the specific findings in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not

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[38] See, e.g., 49 Fed. Reg. 1,887, 1,889-1,890 (May 3, 1984).

[39] H.R. Rep. No. 95-294, at 301-02 (1977) (cited with approval in MEMA, supra note 15, at 1110).

[40] See Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated Aug. 21, 1995; Docket entry A-95-39, II-B-1.

[41] See Docket entry II-B-1 at 9, citing 49 Fed. Reg. 18,887 (May 3, 1984) and 51 Fed. Reg. 2,430 (Jan. 16, 1986).

> commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[42]

Later waiver decisions amplified and clarified this position. In a 1975 decision granting a waiver for California's light-duty vehicle standards for model years 1977 and beyond, the Administrator noted that:

> The structure and history of the California waiver provision clearly indicate a Congressional intent and an EPA practice of leaving the decision on ambiguous and controversial public policy to California's judgment . . . Sponsors of the (waiver) language eventually adopted referred repeatedly to their intent to make sure that no 'Federal bureaucrat' would be able to tell the people of California what auto emission standards were good for them, as long as they were stricter than the Federal standards.[43]

In a 1976 decision granting a waiver to California's motorcycle emission standards for 1978 and later model years, the Administrator further elaborated on this standard of review:

> Arguments concerning . . . the marginal improvements that will allegedly result (from implementation of the standards at issue in this waiver request), and the question of whether these particular standards are actually required by California . . . fall within the broad area of public policy. The EPA practice of leaving the decision on such controversial matters of public policy to California's judgment is entirely consistent with the Congressional intent.[44]

Congress affirmed its intent in the 1977 amendments to section 209(b). Then, Congress amended the section to require California to determine that its standards will be as protective as

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[42] 36 Fed. Reg. 17,458 (Aug. 31, 1971).

[43] 40 Fed. Reg. 23,101, 23,102 (May 28, 1975) (emphasis added).

[44] 41 Fed. Reg. 44,209, 44,210 (Oct. 10, 1976).

Federal standards in the aggregate. This amendment, as noted above, allowed California to choose to adopt individual standards less stringent than the corresponding Federal standards when California determined that such a strategy is appropriate for their air pollution control efforts. The House Committee noted that "[t]he Committee amendment is intended to ratify and strengthen the California waiver provision, i.e., to afford the broadest discretion [to California] in selecting the best means to protect the health of its citizens and the public welfare."[45]

After the 1977 amendments, EPA addressed the issue of whether California needed its own motor vehicle program or a need for the particular standard at issue in the waiver proceeding. In a 1984 decision, EPA rejected arguments raised by the auto manufacturers and agreed with California that the basic "inquiry concerns whether compelling and extraordinary conditions exist that justify California's continued need for its own mobile source emissions control program."[46] In that decision, the Administrator discussed how the legislative history of section 209 showed that Congress' concern for industry was largely focused on problems the industry might face from the administration of two programs. The Administrator went on to conclude: "Therefore, as CARB points out "[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.'"[47] The Administrator determined that he could not deny the waiver on the basis of a lack of need because "the manufacturers have not demonstrated that California no longer has

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[45] H.R. Rep. 95-294, 301-302 (1977), (cited with approval in MEMA I, supra note 15, at 1110).

[46] 49 Fed. Reg. 18,887, 18,890 (May 3, 1984).

[47] Id.

a compelling and extraordinary need for its own program."[48]

This approach to the "need' criterion is also consistent with the fact that because California standards must be as protective as Federal standards in the aggregate, it is permissible for a particular California standard (or standards) to be less protective than the corresponding Federal standard.[49]

Finally, I turn to a consideration of whether the compelling and extraordinary conditions that justify California's motor vehicle emission control program continue to exist. EPA has not received comments to suggest that California no longer suffers from serious and unique air pollution problems. The only adverse comment on this issue came from Mr. Fafarman, who states that the existence of the Fee "implies that California does not really need the waiver to 'meet extraordinary and compelling conditions,'" because "[i]f California really needed auto emissions standards that are substantially different from the federal standards, then logically California would not divert --with no offsetting air-quality benefit -- money that could be used to

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[48] Id. at 18,890.

[49] The Administrator noted that:

> Indeed, to find that the 'compelling and extraordinary conditions' test should apply to each pollutant would conflict with the amendment to section 209 in 1977 allowing California to select standards 'in the aggregate' at least as protective as federal standards.' In enacting that change, Congress explicitly recognized that California's mix of standards could 'include some less stringent than the corresponding federal standards.' See H.R. Rep. No. 95-294, at 302 (1977) (cited with approval in MEMA I, 627 F.2d at 1110). Congress could not have given this flexibility to California and simultaneously assigned to the state the seemingly impossible task of establishing that 'extraordinary and compelling conditions' exist for each standard. (See LEV Waiver Decision Document at 50, EPA Air Docket A-91-71, docket entry II-A-14).

convert federal cars to California cars."[50]

This argument is not convincing. It relies on speculation regarding how money not used to pay the Fee would be used and it implies that California could do more to reduce emissions. It is not within EPA's mandate or authority to deny a waiver because California could do more to reduce emissions.[51] Conceivably, California could always do more. For whatever reason, California in its capacity as regulator has not decided to impose the requirements suggested by Mr. Fafarman. EPA may not put itself in California's place to second-guess that regulatory decision.[52]

Mr. Fafarman provides no evidence to rebut the considerable evidence indicating that California still has compelling air quality problems. CARB has repeatedly demonstrated the existence of compelling and extraordinary conditions in California justifying California's need for its own motor vehicle pollution control program.[53] Based on previous showings by CARB in this regard, CARB's submissions to the record and the absence of any persuasive public comments providing evidence challenging the need for CARB's own motor vehicle pollution control program, I cannot deny the waiver on the basis of a lack of need for a California new motor vehicle program to meet compelling and extraordinary conditions.

C. Consistency with Section 202(a)

1) The Standard of Review for Consistency:

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[50] See Docket entry A-95-39, IV-A-1, at 14.

[51] See supra note 34.

[52] See supra note 34.

[53] See, e.g., 49 Fed. Reg. 1,887, 1,890-1,891 (May 3, 1984); 58 Fed. Reg. 4,144 (Jan. 13, 1993).

Under section 209(b)(1)(C), the Administrator cannot grant California its waiver request if she finds that California standards and accompanying enforcement procedures are inconsistent with Section 202(a) of the Act. California's standards and enforcement procedures are inconsistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame. California's standards and enforcement procedures would also be inconsistent with section 202(a) if the Federal and California certification test procedures were discrepant.[54]

The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow; it is limited to determining whether those opposed to the waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the Federal test procedures.[55]

2) Technological Feasibility, Lead Time and Costs

As stated above, California's standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, given appropriate consideration to the cost of compliance within that time frame.

The central issue in EPA's determination of whether California regulations are consistent with section 202(a) is the issue of technological feasibility. Congress has stated that the "consistency with section 202(a)" requirement relates to technological feasibility.[56] Section 202(a)(2) states, in part, that any regulation promulgated under its authority "shall take effect

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[54] See Introduction, supra, for discussion of section 202(a).

[55] See MEMA, supra note 15, at 1126.

[56] See H.R. Rep. No. 95-294, at 301 (1977).

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."[57] Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists or, if not, whether there is adequate time to develop and apply the technology before the subject standards go into effect.[58] The latter scenario also requires the Administrator to determine whether the costs of developing and applying the technology within that time frame are excessive.[59]

As discussed earlier in Section III - Standard of Proof, the burden of proof in a waiver proceeding lies squarely with the parties who oppose the waiver.[60] Specifically, the court in MEMA held that:

> The language of the statute and its legislative history indicate that California's regulations, and California's determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing, and thereafter the parties opposing the waiver request bear the burden of persuading the administrator that the waiver request should be denied.[61]

It is important to note that, as previous waiver decisions have held, the cost of compliance is relevant only when the technology needed for compliance with California's standards does not

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[57] 42 U.S.C. § 202(a)(2) (1990).

[58] See MEMA, supra note 15, at 1118.

[59] See MEMA, supra note 15, at 1118.

[60] See MEMA, supra note 15, at 1121.

[61] See MEMA, supra note 15, at 1121.

exist.[62] This is because section 202(a) is concerned with the cost of compliance during the period "necessary to permit the development and application of the requisite technology."

In MEMA I, the court addressed the "cost of compliance" issue at some length in the context of reviewing a waiver decision. According to the court:

> Section 202's "cost of compliance" concern, juxtaposed as it is with the requirement that the Administrator provide the requisite lead time to allow technological developments, refers to the economic costs of motor vehicle emission standards and accompanying enforcement procedures. See S. Rep. No. 89-1922, at 5-8 (1965); H.R. Rep. No. 90-728, at 23 (1967), reprinted in 1967 U.S.C.C.A.N. 1938. It relates to the timing of a particular emission control regulation rather than to its social implications. Congress wanted to avoid undue economic disruption in the automotive manufacturing industry and also sought to avoid doubling or tripling the cost of motor vehicles to purchasers. It therefore requires that emission control regulations be technologically feasible within economic parameters. Therein lies the intent of the "cost of compliance" requirement.[63]

Prior waiver decisions are fully consistent with this discussion in MEMA I, which indicates that the cost of compliance must reach a very high level before a waiver can be denied.

a. *Technological Feasibility*

As stated above, the burden is on those opposing the waiver to produce evidence establishing that the regulations are technologically infeasible. Congress has stated that the "consistency with section 202(a)" requirement related to technological feasibility. Section 202(a)(2) states, in part, that any regulation promulgated under its authority "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

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[62] See, e.g., 41 Fed. Reg. 42,209 (Oct. 7, 1976) and 55 Fed. Reg. 43,028 (Oct. 25, 1990).

[63] See MEMA, supra note 15, at 1118 (emphasis in original). See also id. at 1114 n. 40 ("[T]he 'cost of compliance' criterion relates to the timing of standards and procedures.").

such period." Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists or, if not, whether there is adequate time to develop and apply the technology before the subject standards go into effect. The latter scenario also requires the Administrator to determine whether the costs of developing and applying the technology within that time frame are excessive.

In NRDC v. Thomas, [64] the court held that standards "cannot both require adequately demonstrated technology and also be technology-forcing."[65] The court agreed with EPA's interpretation and a prior D.C. Circuit decision regarding the distinction between standards that are based on adequately demonstrated technology and standards which are technology-forcing. "The agency describes technology-forcing standards as those that 'are to be based upon that technology which the Administrator determines will be available, and not necessarily that technology which is already available. The adoption of such standards helps to encourage and hasten the development of new technology.'" Adequately demonstrated technology, on the other hand, "is one which has been shown to be reasonably reliable, reasonably efficient, and which can reasonably be expected to serve the interest of pollution control without becoming exorbitantly costly in an economic or environmental way."[66]

Previous EPA waivers are in accord with this position.[67] For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent

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[64] 805 F.2d 410, 428 (D.C. Cir. 1986).

[65] Id.

[66] Id.

[67] See 49 Fed. Reg. 1,887, 1,895 (May 3, 1984); 43 Fed. Reg. 32,182, 32,183 (July 25, 1978); 41 Fed. Reg. 44,209, 44,213 (Oct. 7, 1976).

with section 202(a) if adequate technology and adequate lead time existed to implement that technology.[68] The Administrator said he would consider costs only if the technology did not yet exist. My review in the present case regarding the technological feasibility of CARB's evaporative emission standards will follow NRDC's interpretation of standards which do not force technology.

In the present case, CARB has determined that by using existing technology the amended evaporative emission standards can be met by all affected vehicle classes for the 1996 to 1998 model years.[69] In addition, CARB required the three day diurnal test sequence and the supplemental two day diurnal test sequence for 1995 model year vehicles.[70] Furthermore, this amendment further aligns the California evaporative test procedure with the existing federal test procedure which has been implemented for two model years. It is therefore reasonable for EPA to believe that manufacturers do not find CARB's standards or test procedures technologically

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[68] 41 Fed. Reg. 44,209 (Oct. 7, 1976).

[69] See Waiver Request Letter I, Docket entry II-A-1, p. 7; Staff Report, Docket entry II-A-3, p. 7-9; Technical Support Document, Docket entry II-A-5, p. 14; and Final Statement of Reasons for Rulemaking, Docket entry II-A-9. See also Revised Waiver Request Letter, Docket entry II-A-11, p. 5, stating "Only 10 percent of a manufacturer's production of vehicles in each classification must meet the new requirements for the 1995 model year. There should accordingly be little question regarding the technological feasibility of meeting the 1995 model year requirements." It should be noted that CARB is not requiring 10 percent compliance from each category of motor vehicles (i.e. 10 percent of passenger cars, 10 percent of light-duty trucks, 10 percent of medium-duty vehicles, etc.), indeed as stated in Title 13 California Code of Regulations, section 1976 (b) (1) (c) a manufacturer must insure that 10 percent of its passenger cars and cumulatively 10 percent of its light-duty trucks, medium-duty vehicle and heavy-duty vehicles comply with CARB's 1995 evaporative emission standards. See Thomas Jennings, CARB letter to David Dickinson, EPA, dated May 13, 1993, Docket entry II-A-13. Therefore, because of the cumulative 10 percent requirement, new evaporative technology requirements will be applied to a fewer number of vehicles. Thus, manufacturers maintain flexibility to apply new technology to the vehicles of their choice.

[70] 58 Fed. Reg. 16,002, Mar. 24, 1993. EPA's supplemental two day diurnal test....

infeasible.

During the initial adoption of the enhanced test procedures for 1995 model year vehicles, CARB determined that by using existing technology the new California evaporative emission standards can be met with respect to all affected vehicle classes by the 1995 model year. Some manufacturers challenged this conclusion during the state rulemaking proceeding; their concerns were fully addressed in the final statement of reasons submitted with the original waiver request.

In the follow-up rulemaking, few issues of technological feasibility were raised. In response to comments, CARB relaxed the originally-proposed three day diurnal plus hot soak 2.0 grams/test standard for medium duty vehicles with a GVWR of 6,001-8,500 pounds and fuel tanks of 30 gallons or greater. The revised standard of 2.5 grams/test is identical to the comparable federal standard. The Final Statement of Reasons identified no public comments claiming technical infeasibility in any other areas.

In view of these facts, I agree with CARB's assessment that existing technology may be used to enable manufacturers to meet CARB's 1996-1998 evaporative emission requirements and therefore the waiver cannot be denied on the basis of infeasible technology.

b. Lead Time

With respect to lead time issues, and whether manufacturers had sufficient time to apply technology or were being deprived of statutorily mandated lead time requirements, EPA did not receive comments claiming an inadequate amount of time to develop or apply adequate technology. This waiver addresses an amendment to evaporative emission standards and California's test procedures for passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and engines (for all fuels except diesel fuel and natural gas) for 1996-1998 model years. CARB indicated that it expects that the California and Federal evaporative

emission standards and test procedures will be fully aligned and streamlined. EPA would consider any change in requirements following model year 1998 in a separate waiver proceeding addressing model years subsequent to 1998.

Therefore, because EPA received no comments during this waiver proceeding indicating that the lead time provided by CARB's regulation is inadequate, and manufacturers generally indicated their capacity to meet CARB's implementation date of 1996, I conclude that CARB has provided adequate lead time and the waiver cannot be denied on this basis.

c. Cost of Compliance

In examining the costs of compliance, EPA has previously stated that the costs to be considered in determining whether California's standards are inconsistent with section 202(a) are the costs of developing and applying emissions control technology to meet emissions standards. Thus, the Administrator first determines whether adequate technology already exists or, if not, whether there is adequate lead time provided to develop and apply the technology before the amended requirements go into effect.

Section 202(a) states, in part, that any regulation promulgated under its authority "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." Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists or, if not, whether there is adequate time to develop and apply the technology before the subject standards go into effect. The administrator must consider the costs that will be presumed to be associated with technology and lead time to determine if they are extraordinary.

In the present case, as discussed above, CARB determined that the technology necessary

to comply with the regulation already exists. CARB pointed to the currently available evaporative emission control equipment and to currently available evaporative emission control equipment and to technology which will enables manufacturers to comply with Federal evaporative emissions regulation. Therefore, as I have determined above that the adequate technology already exists and applied in the time frame available, I must now consider the costs associated with the development and application of the technology required to meet the California standards.

In MEMA I, the court addressed the "cost of compliance" issue at some length in the context of reviewing a waiver decision. According to the Court:

> Section 202's "cost of compliance" concern, juxtaposed as it is with the requirement that the Administrator provide the requisite lead time to allow technological developments, refers to the economic costs of motor vehicle emission standards and accompanying procedures. See S. Rep. No. 89-192, at 5-8 (1965); H.R. Rep. No. 90-728, at 23 (1967), reprinted in 1967 U.S.C.C.A.N. 1938. It relates to the timing of a particular emission control regulation rather than to its social implications. Congress wanted to avoid undue economic disruption in the automotive manufacturing industry and also sought to avoid doubling or tripling the cost of motor vehicles to purchasers. It therefore requires that emission control regulations be technologically feasible within economic parameters. Therein lies the intent of the "cost of compliance" requirement.[71]

EPA's waiver decisions are fully consistent with this discussion in MEMA I, which indicates that the cost of compliance must reach a high level before a waiver can be denied. They indicate that these costs must be extraordinary in order to find that the California standards are not consistent with section 202(a).

As with the other issues related to the determination of consistency with section 202(a),

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[71] MEMA, supra note 15, at 1118.

the burden of proof regarding the cost issue falls upon the opponents of the waiver. It should be noted, as with other elements of this waiver, EPA received no comments that this cost issue should prevent EPA from granting a waiver.

During EPA's regulatory development for its own evaporative emission standards and test procedure amendments, EPA envisioned manufacturers to implement more sophisticated purge valves, rollover valves, perhaps a canister size increase of one to two liters, and some fuel temperature management. EPA's final cost estimates, which manufacturers did not directly rebut, were $9.70, $13.35, and $10.70 for light duty vehicles, light-duty trucks, and heavy-duty vehicles, respectively.[72]

The costs of adapting existing technologies or modifying existing equipment within the lead time provided are included as costs of compliance. These costs, however, must be excessive in order to find that the California standards are inconsistent with section 202(a). EPA is not in receipt of any information which would establish that such costs are excessive, and CARB's and EPA's own cost estimates do not indicate that such costs would be excessive.

EPA received no comments indicating that the evaporative emission regulations are technologically infeasible within the lead time provided. However, Mr. Fafarman claims that the Smog Impact Fee is an unreasonable cost associated with California waivers, and that the waiver should therefore be denied. This argument is not convincing. As discussed above, the Smog Impact Fee itself is not preempted under section 209(a), and therefore is not itself subject to the requirements of section 209(b). Moreover, Mr. Fafarman provides no evidence that the Fee causes the evaporative emission regulations to violate the requirements of section 209(b)(3), as the Fee has no effect on the technological feasibility of the evaporative emission requirements or

[72] (Aug. 25, 1994 Decision Document at 27.)

their costs. Even if the Fee itself were properly reviewable under section 209(b)(3), it is clear that, under the criteria discussed above, the Fee would not violate the cost considerations of that section. As discussed in the MEMA case, the cost considerations of that section are related to the technological feasibility of emission control requirements. The "cost" of the Fee is not related to technological feasibility of an emission controls. It is an administrative fee that the State has required as a policy decision. As discussed elsewhere in this decision, EPA's role in this process is limited and does not include any second-guessing of California's policy determinations. In any case, Mr. Fafarman does not provide any evidence that the $300 Fee would create the level of economic disruption contemplated by Congress and the MEMA court under section 209(b)(3).

Since it is required of those opposing a waiver to come forward with evidence establishing that the regulations are technologically infeasible within the lead time provided giving appropriate consideration to the costs of compliance, and because no commentators have supplied any data or other documentation to support such an allegation, and because EPA's own cost estimates based on its own evaporative emissions standards and test procedures indicated that such costs are not excessive, I find that no one has met their burden of establishing that California's standards are technologically infeasible.

To the extent that adaption of existing technologies involves costs, there is no evidence to suggest that such costs are excessive. Therefore, I cannot find that there is adequate lead time to permit the development of technology necessary to meet those standards giving appropriate consideration to the cost of compliance within the required time frame.

3) Consistent Certification Procedures

California's standards and accompanying enforcement procedures would also be deemed

inconsistent with section 202(a) if the California test procedures impose certification requirements inconsistent with the Federal certification requirements. Inconsistency is interpreted to mean that manufacturers would be unable to demonstrate compliance with both the state and the Federal requirements with the same test vehicle in the course of a single test sequence.[73]

Today's waiver analysis for test procedure consistency is limited to model years 1996-1998 only as requested by CARB. CARB determined that its revised standards and other regulatory amendments are compatible with Federal test procedures.

CARB's request for waiver, dated August 21, 1995, stated that the amendments to the California evaporative emissions standards and test procedures as they apply to passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and engines (for all fuels except diesel fuel and natural gas) for 1996 through 1998 model years incorporate a test procedure in order to help assure adequate evaporative canister purge. A waiver for this test procedure was granted for 1995 model year vehicles, the current waiver will make the procedure applicable to 1996-1998 model year vehicles. In addition, CARB states that the amendments further align CARB's enhanced test procedures with the federal procedures by conforming most of the differences between the two test procedures.

At the time that the request for waiver letter was written, a few differences remained

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[73] See e.g., 43 Fed. Reg. 32,182 (July 25, 1978). Dual certification in the course of one test can be accomplished one of two ways. First, the respective test procedures may be so compatible or similar that all of the requirements of each test can be accomplished in the course of one composite test. Alternatively, if prima facie test procedure inconsistency exists, one sovereign may accept the data generated by the other's procedure as proof of compliance with that sovereign's requirements. If neither of these circumstances exist then the prohibited test procedure inconsistency remains as a bar to consistency with section 202(a) and therefore, precludes a waiver of Federal preemption.

between the proposed amended evaporative regulations and federal regulations. Several of the inconsistencies were eliminated when technical amendments to the federal evaporative test procedures were published on August 23, 1995. The remaining differences between the California and federal enhances test procedures including the following:

- CARB requires a testing temperature of 105 degrees F; the federal procedure specifies a maximum temperature of 95 degrees F.
- California's procedures continue to allow the use of a Phase 2 reformulated gasoline certification test fuel with an RVP of 7 pounds per square inch (psi), while the federal RVP requirement for certification test gasoline is 9.0 psi.
- California's correction factors continue to be different than federal regulations. Specifically, CARB's procedures allow manufacturers to conduct the running loss test at a lower initial fuel temperature than 105°F if the manufacturer can demonstrate that the fuel temperature would be less than 105°F on a 105°F ambient temperature day.
- CARB's cooling fan requirements during the running loss test continue to be more stringent than federal requirements; fans meeting California's specifications would also meet federal criteria.
- The fuel vapor temperature during the running loss test must match the fuel vapor temperature profile within a tolerance of ± 5°F, which the federal regulation did not provide.
- Finally, in the last 120 seconds of the running loss test, CARB's procedures continue to require that the fuel vapor temperature be controlled within ± 3°F of the fuel vapor temperature profile. The federal regulations tightened the fuel liquid temperature tolerance from ± 3°F to ± 2°F during the last 120 seconds rather than controlling the fuel vapor temperature.

In a letter dated October 16, 1996, CARB updated information pertaining to the August 21, 1995, request for waiver request. CARB limited the waiver to the 1996-1998 model years and discussed new developments that expand the manufacturers' ability to use one set of tests to demonstrate compliance with both the federal and state standards. First, the technical amendment published on August 23, 1995 allowed for the 1996 model year, the use of

evaporative emissions test results under the California test procedures for demonstrating compliance with the federal standards.[74] CARB states that this technical amendment conclusively eliminates any consistency concerns for the 1996 model year.

The second development that expands the manufacturers' ability to use one set of tests to demonstrate compliance with both the federal and state standards is a Manufacturers' Advisory Correspondence (MAC) #96-05, issued by CARB on July 16, 1995. This MAC announced that, pursuant to recent amendments to section 4.j. of the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," CARB will accept evaporative emissions test data from tests using the federal 9.0 psi RVP fuel and 95 degree F test temperatures, regardless of the characteristics of the gasoline used in exhaust testing. The MAC further indicated that, in any in-use compliance testing, vehicles will be tested using the same fuel and test temperatures used during certification testing.

Apart from the potential effects of the different federal and California vapor pressure and test temperature specifications, CARB states that there are two other respects in which the evaporative emissions standards and test procedures are more stringent than the comparable federal evaporative emission standards and test procedures for the 1996-1998 model years. First, the California program phases in the enhanced evaporative emission standards and test procedures more quickly than the federal program. The California phase in starts in 1995 and ends in 1998 while the federal phase in starts in 1996 and ends in 1999. Second, the California 3-day diurnal standards for incomplete heavy-medium-duty vehicles and heavy-duty vehicles are numerically more stringent than the comparable federal standards.

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[74] See Evaporative and Refueling Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles and Light-Duty Trucks and Heavy-Duty Vehicles; Technical Amendments, 60 Fed. Reg. 43,880, 43,887 (Aug. 23, 1995).

CARB states that there is a high likelihood that manufacturers will use essentially identical evaporative emissions control systems to comply with the federal and California enhanced evaporative emissions requirements. This is borne out by CARB's certification experience to date.

EPA's experience with certification testing is that manufacturers will use the same data to fulfill the testing requirements of EPA and CARB if possible. The high cost of testing provides a financial incentive for manufacturers to use federal test temperature and fuel whenever vehicles will certified by both EPA and CARB.

Therefore, in view of the above, I concur with CARB's determination that its amendments are consistent with section 202(a). Manufacturers will be able to satisfy both the current Federal certification requirements and the new CARB certification requirements by running the same test on a single vehicle or engine. My review is limited to determining whether those opposed to a waiver have met their burden of establishing that California's standards are technologically infeasible or that California's test procedures impose requirements inconsistent with the Federal test procedures.

Therefore, since no one has come forth opposing the waiver and no one has shown California's amended standards or accompanying procedures are technologically infeasible or that California's test procedures are inconsistent with Federal procedures, I cannot find that California's standards and accompanying regulatory amendments are inconsistent with section 202(a) of the Act.

D. Constitutional and Other Issues

Mr. Fafarman argues that the Fee violates the Commerce Clause and Privileges and Immunities Clause of the U.S. Constitution. It is well established that review of the

constitutionality of California's laws is beyond EPA's narrow responsibilities under CAA section 209(b). As the court in MEMA found:

> The Administrator contends that he addressed all questions the statute requires him to address, and that the constitutional ... implications of the [California] regulations are beyond the scope of his review in a waiver proceeding. We essentially agree with the Administrator's position.

Id. at 1111. Further, "the Administrator operates in a narrowly circumscribed proceeding requiring no broad policy judgments on constitutionally sensitive matters. Nothing in section 209 requires him to consider the constitutional ramifications of the regulations for which California requests a waiver." Id. at 1115. This analysis is particularly appropriate with regard to the Fee, which, as discussed above, is not even implicated by section 209 of the CAA.

If Mr. Fafarman believes that the Fee is unconstitutional, he should take action directly against the State, as the State is the true party of interest regarding that question. In fact, a direct challenge against California has been brought in California state courts, and the initial decision was favorable to Mr. Fafarman's arguments. Jordan v. California DMV, No. 95AS05228 (Ca. Super. Ct., Apr. 9, 1997).

Mr. Fafarman provided a second set of comments, supporting his constitutional claims, arguing that the Fee is not justified on the basis of equity and that California's standards are not necessarily the most stringent in the nation. However, it is not appropriate for EPA to review the general "equity" of California's Fee. Even if the Fee were appropriately reviewable under section 209, EPA must limit its review to the specific factors in section 209(b) and cannot deny a waiver based on "equity" considerations.

> [T]here 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. The general principles of administrative law and procedure call upon an agency to give reasoned consideration to all facts and issues relevant to the matter at

> hand, but the determination of what is relevant turns in the first instance on analysis of the express language of the statute involved and the content given that language by implication. ... An administrative agency has no charter apart from the framework constructed by that analysis to enforce or otherwise consider whatever suits its or someone else's fancy.

MEMA, supra note 15, at 1116.[75]

Further, though Mr. Fafarman notes that California's standards are not necessarily the most stringent in the nation, he provides no evidence that the standards reviewed in this waiver application are not in the aggregate as protective to public health as applicable federal standards.

Finally, Mr. Fafarman's third set of comments are again designed merely to criticize the substance of the Fee, rather than its consistency with section 209. He notes that many older model California vehicle standards (e.g. model year 1977-1979) are less stringent than newer model federal standards. This analysis is irrelevant to whether the California standards for new vehicles are as protective of public health and welfare as applicable federal standards for such vehicles, which contemplates comparison of vehicles standards for the same model year.

VI. Within-the-Scope Determination Regarding California's 1995 model year enhanced evaporative emission standards and test procedures

EPA today announces its determination that California's amendments to its 1995 model year enhanced evaporative emissions standards and test procedures are within-the-scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act.

1. Background

By letter dated August 21, 1995, CARB submitted to EPA a waiver request establishing enhanced evaporative emissions and test procedures applicable to model years 1996 to 1998. In that letter, CARB requested that these enhanced evaporative emissions standards and test

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[75] See also note 32.

procedures, as they apply to 1995 model year, be found within-the-scope under section 209(b) of the Act of a previous waiver of federal preemption. Accordingly, EPA finds that these enhanced evaporative emissions, as they apply to 1995 model year, are within-the-scope of a previous waiver.[76]

Specifically, CARB's amendments, as they apply to 1995 model year, will:

- incorporate the supplemental test procedure, which assures adequate canister purge.
- change the evaporative emission standards for the hot soak and the diurnal emissions test for medium-duty vehicles (6,001-8,5000 lbs. GVWR) with fuel tanks greater than 30 gallons from 2.0 to 2.5 grams, which is consistent with federal standards.
- allow manufacturers to carry over 1995 model year enhanced certification data as long as the supplemental test data are provided and specified conditions are met.

The amended evaporative emissions standards are as follows:

Class of Vehicles	3 Day Diurnal + Hot Soak Standard (grams/test)	Supplemental Standard (grams/test)
Passenger Car	2.0	2.5
Light-Duty Trucks	2.0	2.5
Medium-Duty Vehicles		
(6,001-8,500 lbs. GVWR)		
with fuel tanks <30 gallons	2.0	2.5
with fuel tanks ≥30 gallons	2.5	3.0
(8,501-14,000 lbs. GVWR)	3.0	3.5
Heavy-Duty Vehicles		
(over 14,000 lbs. GVWR)	2.0	4.5

[76] See 59 Fed. Reg. 46,978 (Sept. 13, 1994); see also Aug. 25, 1994 Decision Document.

As mentioned before, there are a few remaining differences with the California and Federal evaporative enhanced test procedures, which EPA and California hope to solidify for implementation starting in the 1999 model year. California's amendments to 1995 model year further align itself to the federal program and do not disrupt California's protectiveness requirement, consistency with certification requirements, or create new issues. Therefore, EPA will approve CARB's amendment as being within-the-scope of a previous waiver of federal preemption, falling under section 209(b) of the Act, as amended.

2. Discussion

As discussed before, EPA may consider an amendment to be within-the-scope of a previously granted waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with section 202(a) of the Act, and does not raise new issues affecting EPA's previous waiver determination.

A) Protectiveness

When the CARB Board approved evaporative emissions standards and test procedures for model year 1995, it issued a Resolution stating that it had determined "that the amendments approved herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.[77]

CARB correctly asserts that its enhanced evaporative amendments do not disrupt its protectiveness requirements, as evaluated in the August 25, 1994 Decision Document for which CARB was granted a waiver of federal preemption. It finds that its "protectiveness

[77] CARB Resolution 90-50, dated Aug. 9, 1990, Docket entry II-A-5, at 3.

determinations are clearly not arbitrary and capricious. When the current California and federal evaporative emissions standards and test procedures are compared, there is a reasonable basis for concluding that the state standards are no less protective than the federal standards."[78]

In this evaluation, CARB encourages EPA to review its protectiveness determination in the larger context of CARB's low-emission vehicle program, which CARB asserts that under this context "there can be no doubt that the Board's protectiveness determination is justified."[79] Specifically, under CARB's low-emission vehicle program, CARB has established tiers of more stringent emission standards and mechanisms for phased introductions of these vehicles, which CARB has received a waiver of federal preemption for its passenger cars and light-duty trucks.[80] EPA agrees with CARB's assessment that when viewed in this light, along with its proposed evaporative test procedures, CARB's amendments are as protective as federal requirements.

Finally, CARB states that no manufacturer or other member of the public challenged CARB's protectiveness requirement based on these amendments to its enhanced evaporative procedure. Additionally, EPA did not receive comments questioning either CARB's "protectiveness" determination for these standards, or whether the new certification requirements undermine the protectiveness of the standards. It follows that with these new requirements, CARB's standards will continue to be as protective as the comparable federal standards upon which previous waivers were granted and are still applicable in model year 1995. Therefore, based on the record before me, I find that CARB's amendments do not undermine its

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[78] Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated Aug. 21, 1995, at 7.

[79] Id. at 8.

[80] See 58 Fed. Reg. 4,144 (Jan. 13, 1993).

determination that its state standards are, in the aggregate, at least as protective as applicable federal standards.

B) Consistency

CARB has determined that its amendments are consistent with section 202(a) of the Act. As discussed above, California's standards would be inconsistent with section 202(a) if (1) there is inadequate lead time to permit the development of the technology necessary to meet those requirements, given appropriate consideration to the cost of compliance within that time; or (2) the federal and state test procedures are inconsistent if it is necessary that manufacturers perform two test procedures to meet EPA's and California's certification requirements.[81]

The CARB record contains no evidence that manufacturers raised any lead time issues in regard to CARB's evaporative test procedures amendments to 1995 model year vehicles. Further, EPA did not receive any comments alluding or disputing any lead time problems posed by CARB's adoption of these amendments.

In regards to certification consistency, CARB determined that its revised standards and amendments, as it applies to 1995 only, do not pose test procedure inconsistency when compared to federal requirements.[82] CARB asserts that differences in "test temperature and test fuel RVP do not initially preclude manufacturers from using one test to directly determine compliance with

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[81] See, e.g., 43 Fed. Reg. 32,182 (July 25, 1978). Dual certification in the course of one test can be accomplished one of two ways. First, the respective test procedure may be so compatible or similar that all of the requirements of each test can be accomplished in the course of one composite test. Alternatively, if prima facie test procedure inconsistency exist, one sovereign may accept the data generated by the other's procedure as proof of compliance with that sovereign's requirements. If neither of these circumstances exist then the prohibited test procedure inconsistency remains as a bar to consistency with section 202(a) and therefore, precludes a waiver of federal preemption.

[82] See Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated Aug. 21, 1995, at 11.

both the state and federal enhanced evaporative emission standards."[83] According to CARB, the California test procedures provide an optional means of compliance in which a manufacturer wishing to do so can meet both the state and federal requirements with one test. Moreover, in the 1994 evaporative waiver providing CARB with a waiver of federal preemption for the 1995 model year, EPA decided that it would accept CARB's data to certify 1995 model year vehicles and trucks as demonstrating compliance with federal standards, with the federal government providing the appropriate certificate of conformity.[84]

Therefore, because these amendments do not raise lead time issues, and because they do not establish any new certification procedures inconsistent with federal certification requirements, EPA agrees with CARB's determination that its amendments are consistent with section 202(a) of the Act.

C) New Issues

Finally, CARB asserts that it is not aware of any new issues which preclude a conclusion that the enhanced evaporative emission standards and test procedures, as it applies to 1995 model year, are within-the-scope of previous waivers. CARB correctly notes that these evaporative emissions amendments are within the confines of the previous waiver decision, and thus do not raise any new issues. By adopting these amendments, the CARB Board has sought to align its

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[83] Id. at 11.

[84] See Letter from Thomas Ball, Chief, Compliance Programs Branch, EPA, to Greg Dana, Association of International Automobile Manufacturers, dated Oct. 14, 1993, Docket entry II-C-1. This letter was concurrently incorporated into a "Dear Manufacturer" letter on Oct. 14, 1993. This letter notes that EPA is continuing to evaluate the impact of the difference between CARB and EPA's test procedures for 1996, but for carryover purposes from model year 1995 to 1996, EPA intends to allow manufacturers to carryover evaporative certification data from CARB's 1995 three-day diurnal test sequence to demonstrate compliance with 1996 Federal three-day diurnal evaporative standards.

motor vehicle program with federal requirements. Because these amendments do not raise no new issues, EPA will not deny CARB's within-the-scope request based on this criteria.

Finally, because these amendments do not undermine California's determination that its standards are, in the aggregate, as protective of public health and welfare as the Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting previous waiver decisions, EPA finds that as applied in the 1995 model year, they are included within-the-scope of the previous waiver of federal preemption.

VII. Within-the-Scope Determination Regarding California's Ultra-Small Volume Manufacturers

EPA today announces its determination that California's amendments to its 1998 model year enhanced evaporative emissions standards and test procedures applicable to ultra-small volume manufacturers (USVMs) are within-the-scope of today's waiver decision that grants California a waiver of Federal preemption, pursuant to section 209(b) of the Act, for its 1996 to 1998 model year enhanced evaporative emission standards and test procedures.

1. Background

By letter dated December 24, 1997, CARB submitted to EPA a request that EPA find CARB's amendments to its enhanced evaporative emission regulations applicable to USVMs to be within-the-scope of CARB's previously submitted waiver request of August 21, 1995. The August 21, 1995 waiver request is the primary subject of today's waiver determination, and for administrative efficiency EPA is basing its within-the-scope determination for USVMs on the findings made by the full waiver determination made within this document. Accordingly, EPA finds that California's enhanced evaporative emission requirements, as they apply to USVMs, are within-the-scope of the waiver granted previously within this document.

Specifically, California's enhanced evaporative emission requirements are phased-in from the 1995 through the 1998 model years. USVMs were exempted from the phase-in schedule but were required to comply with the requirements for 100 percent of their vehicle fleet for the 1998 and subsequent model years. An USVM is defined by California as a manufacturer with California sales less than or equal to 3,000 vehicles per model year, based on the average number of vehicles sold by the manufacturer in the previous three consecutive model years. California's amendments postpone the implementation of the 100 percent compliance of USVMs from 1998 to 1999 model year.

2. Discussion

As discussed above, EPA may consider an amendment to be within-the-scope of a previously granted waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with section 202(a) of the Act, and does not raise new issues affecting EPA's previous waiver determination.

A) Protectiveness

When the CARB Board approved the enhanced evaporative emission standards and test procedures, it issued a Resolution stating that it had determined that "the regulatory amendments approved herein will not cause California motor vehicle emissions standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards."[85]

CARB correctly asserts that its USVM amendments do not disrupt its protectiveness requirements, as evaluated previously in today's waiver decision. The USVM amendments apply only to the 1998 model year and CARB expects to affect only about 100-150 vehicles. Because

[85] CARB Resolution 97-20, See Docket entry II-B-15.

small volume manufacturers do not have to meet the federal enhanced evaporative emission requirements until the 1999 model year, there will be no occasions where a USVM has to meet the federal enhanced evaporative emission requirements before the California requirements become applicable. Lastly, CARB asserts that because of the very small number of vehicles involved, that the previous protectiveness determination should not be undermined.

EPA did not receive any previous comments questioning either CARB's "protectiveness" determination for its enhanced evaporative emission requirements applicable to 1996 to 1998 model years, except Mr. Fafarman's comments which have previously been addressed. Because the federal requirements for SVMs begins no earlier than California's requirements for USVMs, it follows that CARB's standards will continue to be as protective as the comparable federal standards upon which EPA's previous waivers were granted applicable to model year 1998. Therefore, based on the record before me, I find that CARB's amendments do not undermine its determination that its standards are, in the aggregate, at least as protective as applicable federal standards.

B) Consistency

CARB has determined that its amendments are consistent with section 202(a) of the Act. As discussed above, California's standards would be inconsistent with section 202(a) if (1) there is inadequate lead time to permit the development of the technology necessary to meet those requirements, given appropriate consideration to the cost of compliance within that time; or (2) the federal and state test procedures are inconsistent if it is necessary that manufacturers perform two test procedures to meet EPA's and California's certification requirements.

CARB asserts that lead time is not an issue as the affected parties (USVMs) would only experience a delay (or postponement) in the implementation of standards that they hade been

aware of for years. As such, this postponement will make it more feasible for these manufacturers to implement one set of design changes that address multiple California and federal emission control requirements in a single model year without temporarily abandoning the California market. EPA did not receive any comments when reviewing the initial enhanced evaporative emission requirements applicable to USVMs and has no reason to believe that lead time or technological feasibility would become an issue with the postponement of California's standards.

With regard to certification consistency, CARB represents that it will accept evaporative emissions test data from tests using the federal 9.0 psi RVP fuel and 96○F test temperatures, regardless of the gasoline used in exhaust emissions testing. Therefore the manufacturers have the option of using the federal test conditions to certify to both the federal and California standards.[86]

Therefore, because the amendments do not raise lead time issues, and because they do not establish any new certification procedures inconsistent with federal certification requirements, EPA agrees with CARB's determination that its amendments are consistent with section 202(a) of the Act.

C) <u>New Issues</u>

Lastly, CARB asserts that it is not aware of any new issues affecting the previously granted waiver and the pending waiver request (the full waiver addressed above in today's decision) regarding California's enhanced evaporative emission standards and test procedures that are raised by the amendments covered by this letter. By adopting these amendments, CARB has sought to align its USVM requirements with federal requirements. Because these

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[86] <u>See</u> Docket entry II-B-12 at p. 5.

amendments raise no new issues, EPA will not deny CARB's within-the-scope request based on this criteria.

Finally, because these amendments do not undermine California's determination that its standards are, in the aggregate, as protective of public health and welfare as the Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting previous waiver decisions, EPA finds that as applied in the 1998 model year, they are included within-the-scope of the full waiver determination made by today's decision.

VIII. Decision

The Administrator has delegated the authority to grant a state a waiver of Federal preemption, under section 209(b) of the Act to the Assistant Administrator for Air and Radiation. Based upon the above discussion and findings, I cannot make the determinations required for a denial of a waiver under section 209(b) of the Act, and therefore, I hereby waive application of section 209(a) of the Act to the State of California for passenger cars, light-duty trucks, and medium-duty vehicles for model years 1994 and later with respect to Title 13, California Code of Regulations (CCR) and the documents incorporated by reference therein: Section 1976, California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles.

Dated: July 28, 1999

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Robert A. Perciasepe
Assistant Administrator
For Air and Radiation