presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants with special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until May 24, 1999. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at EPA Air Docket. (Docket No. A–97–20).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: March 17, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7429 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6316–2]

Request From Massachusetts Concerning Zero Emission Vehicle Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: The Attorney General of the Commonwealth of Massachusetts has requested that EPA respond to certain questions related to whether Massachusetts's regulations requiring the sale of a certain number of zero emission vehicles in the calendar years 1998–2000 are preempted by the Clean Air Act. The questions have arisen in the context of a decision by the United States Court of Appeals for the First Circuit in a litigation between Massachusetts and automobile manufacturers. This notice announces the opening of a thirty day period for the submission of written comments regarding the issues raised by the Court decision and the request from Massachusetts.

DATES: Written comments must be received on or before April 26, 1999

ADDRESSES: Written comments regarding the request should be submitted, in duplicate, to Public Docket No. A–99–08 at the following address: U.S. Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. The Agency also requests that a separate written copy be sent to the contact person at the address noted below. The information received from Massachusetts, as well as any written comments received from interested parties, is available for public inspection in the Air Docket at the above address during from 8:00 a.m. to 5:30 p.m Monday to Friday, except on government holidays. The telephone number for EPA's Air Docket is (202) 260–7548. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: For more information about this document, please contact Michael Horowitz, Office of General Counsel (2344), 401 M St., SW, Washington, DC 20460; telephone (202) 260–8883; fax (202) 260–0586; and e-mail:
horowitz.michael@epamail.epa.gov

SUPPLEMENTARY INFORMATION: On December 29, 1998, the U.S. Court of Appeals for the First Circuit issued a decision in *American Automobile Manufacturers Ass'n* v. *Massachusetts Department of Environmental Protection*, 163 F.3d 74 (1st Cir. 1998). In that decision, the court determined that it would allow EPA an opportunity to rule on certain issues relevant to whether Massachusetts's requirement that automobile manufacturers deliver for sale a certain number of zero emission vehicles (''ZEVs'') in the years 1998–2000 violated the Clean Air Act. The court therefore provided Massachusetts with ''a reasonable opportunity to obtain a ruling from the EPA. * * * However, if no agency ruling is forthcoming within 180 days from the date this opinion issues, the parties shall so notify this court. We will then decide the issues before us without the EPA's guidance.''

Pursuant to the court's decision, on January 28, 1999, the Attorney General of the Commonwealth of Massachusetts sent a letter to the Administrator requesting EPA's opinion regarding the questions arising from the case.

I. Background

This case arises from Massachusetts's regulations requiring that certain automobile manufacturers produce and deliver for sale in Massachusetts a combined total of 750 ZEVs during calendar years 1998 and 1500 ZEVs during each calendar years 1999 and 2000. There are also certain reporting requirements related to these regulations. This case is the latest in a series of law suits that automobile manufacturers have brought against Massachusetts and New York related to those states' incorporation of California's Low Emission Vehicle program into their state laws. The following is a brief summary of the critical federal statutory provisions and the events leading up to the Court's decision. For further information, please review the December 28, 1998 decision and the briefs filed in that case, as well as the earlier decisions resulting from the suits brought by manufacturers against New York and Massachusetts. [1]

[1] The briefs have been placed in the docket. The significant prior decisions in the Massachusetts litigation are as follows: *AAMA* v. *Massachusetts DEP*, 998 F. Supp. 10 (D. Mass. 1997); *AAMA* v. *Massachusetts DEP*, 31 F.3d 18 (1st Cir. 1994); *AAMA* v. *Greenbaum*, No.93–10799–MA, 1993 WL 443946 (D. Mass. Oct. 27, 1993). The significant decisions in the New York litigations are: *AAMA* v. *Cahill*, 152 F.3d 196 (2d Cir. 1998); *AAMA* v. *Cahill*, 973 F. Supp. 288 (N.D.N.Y. 1997); *Motor Vehicle Mfrs. Ass'n. (''MVMA'')* v. *New York Dep't of Envtl. Cons. (''New York DEC'')*, 79 F.3d 1298 (2d Cir. 1996); *MVMA* v. *New York DEC*, 869 F. Supp. 1012 (N.D.N.Y. 1994); *MVMA* v. *New York DEC*, 17 F.3d 521 (2nd Cir. 1994).

A. Relevant Clean Air Act Provisions

Under section 209(a) of the Clean Air Act (''CAA''), states and localities are prohibited from adopting or attempting to enforce ''any standard relating to the control of emissions from new motor vehicles.'' Section 209(a) also prohibits state approvals ''relating to the control of emissions from any new motor vehicle * * * as condition precedent to the initial sale, titling * * * or registration of such motor vehicle.'' However, section 209(b) of the Act permits the state of California to request an EPA waiver from this prohibition if California determines that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. EPA must grant this request unless it finds one of the following: (1) California's ''in the aggregate'' determination was arbitrary and capricious; (2) California does not need standards to meet compelling and extraordinary conditions; or (3) California's standards and accompanying enforcement procedures are not consistent with Clean Air Act section 202(a).

There is no similar provision for other states to obtain a waiver from the prohibitions in section 209(a). However, under CAA section 177, once California has promulgated its motor vehicle program, other states may adopt and enforce their own standards as long as such standards are ''identical to the California standards for which a waiver has been granted for such model year'' and such standards have been adopted at least two years before commencement of such model year. Section 177 further states:

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

B. Factual Background

In 1990, the California Air Resources Board (''CARB'') adopted its Low Emission Vehicle (''LEV'') program. One of the elements of that program was a requirement, beginning in model year 1998, that two percent of the cars offered for sale in California by a manufacturer must be ZEVs. That percentage would increase to five percent in model year 2001 and ten percent in model year 2003. California received a waiver for its LEV program, including the ZEV sales requirement, in 1993. 58 FR 4166 (Jan. 13, 1993).

New York and Massachusetts both promulgated regulations adopting California's LEV program, including the ZEV mandate, into their state regulations. Auto manufacturers challenged both state programs in federal court, claiming that the state programs were prohibited under section 209 and were not authorized under the provisions of section 177. In both instances, manufacturers were not successful in their challenges. Courts in both the 1st and 2nd Circuit ruled that the state regulations were permitted under section 177.

However, in 1996, California amended its regulations to eliminate its ZEV sales mandate until the 2003 model year. Later in 1996, California entered into Memoranda of Agreement (''MOAs'') with the seven largest automobile makers. As part of these MOAs, the automobile manufacturers agreed to supply a certain number of ZEVs in the state of California during calendar years 1998–2000. Massachusetts then revised its LEV regulations by replacing the preexisting ZEV sales mandate for the 1998–2002 model years with the ZEV sales portions of the MOAs, using the ZEV sales numbers in the MOAs.

AAMA sued Massachusetts, claiming the revised ZEV regulations violated section 209(a) of the Clean Air Act.[2] The District Court in Massachusetts ruled in favor of the auto manufacturers.[3] However, on appeal, the 1st Circuit refrained from deciding the case, preferring instead to allow EPA to provide its views on the issue, if it chooses to do so. ''This matter is plainly within the EPA's primary jurisdiction, and its resolution could clearly benefit from a deep familiarity with the CAA and the public policy considerations that underlie these statutory provisions. We therefore refer this issue to the EPA for its consideration.'' [4] The court then stayed further judicial action to allow Massachusetts the opportunity to obtain a ruling from EPA on the issues relevant to deciding the case. However, if EPA does not rule within 180 days of the court's decision, the court has indicated that it will then decide the issues without EPA's guidance. Pursuant to the court's decision, the Massachusetts Attorney General sent a letter to the Administrator requesting EPA's opinion regarding the issues arising from the court's opinion.

EPA believes it is appropriate to seek comments from the public on this request from Massachusetts. EPA therefore requests that any interested parties provide comments on the issues raised by the Court's opinion and the letter from Massachusetts.

II. Procedures for Public Participation

EPA will keep the record open until April 26, 1999. Upon expiration of the comment period, EPA will determine the appropriate response, if any, to the request from the Massachusetts Attorney General. Persons seeking information relevant to this proceeding may review the information provided at the EPA Air Docket. (Docket No. A–99–08).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document which summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

Dated: March 17, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7428 Filed 3–25–99; 8:45 am]

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[2] AAMA also sued New York, which had not amended its ZEV mandate at all. The Second Circuit found for the auto makers in that case. *AAMA* v. *Cahill*, 152 F. 3d 196 (2d Cir. 1998).

[3] *AAMA* v. *Massachusetts DEP*, 998 F. Supp. 10 (D. Mass. 1997).

[4] *AAMA* v. *Massachusetts DEP*, 163 F. 3d 74, 83 (1st Cir. 1998).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–7]

Public Water Supply Supervision Program Revision for the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.