

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 9, 1998.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 98-10008 Filed 4-14-98; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-5997-1]

### California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Waiver Decision and Within the Scope Determination; Notice of Correction and Republication and Opportunity for Public Hearing

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice Regarding Waiver of Federal Preemption and Within the Scope Determination and Opportunity for Public Hearing.

**SUMMARY:** On February 6, 1998, EPA published a Notice Regarding Waiver of Federal Preemption and Within the Scope Determination granting California a waiver of Federal preemption for certain motor vehicle emission standards and determining that certain amendments to its vehicle emission warranty statute and regulations were within the scope of previous waivers of Federal preemption. (63 FR 6173, February 6, 1998). Because of administrative error, this Notice was published before the Decision Document was signed by the Assistant Administrator for Air and Radiation, and thus the effective dates listed in the February 6 notice are incorrect. The Decision Document has now been signed, and EPA is announcing that decision in this **Federal Register** notice.

EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b) (Act), beginning in the 1998 model year to enforce amendments to its motor vehicle pollution control program which set new standards, and certification and test procedures for newly-established categories of "Low-Emission" medium-duty vehicles (MDVs). Additionally, EPA today has determined that California's amendments to its warranty statute and regulations for the 1994 and later model years for various motor vehicles are within the scope of previous waivers of

Federal preemption granted pursuant to section 209(b) of the Act to adopt and enforce its revised emission standards and accompanying enforcement procedures for 1979 and later model year vehicles and engines. EPA received a request for a hearing on our within the scope determination contained in the February 6 publication and will consider that request as applying to today's notice as well. Although EPA is not required by the Act to offer a hearing on within the scope determinations, after receiving this hearing request, EPA has decided to offer the opportunity for a hearing regarding whether EPA should reconsider its determination.

**DATES:** EPA has tentatively scheduled a public hearing for May 8, 1998. Any person who wishes to testify on the record at the hearing must notify EPA in writing by April 24, 1998 that he or she will attend the hearing to present oral testimony regarding EPA's determination. If EPA receives one or more requests to testify, this hearing will be held. If EPA does not receive any requests to testify, this hearing will be canceled. Anyone who plans to attend the hearing should call Robert M. Doyle at (202) 564-9258 to determine if this hearing will be held. Regardless of whether or not a hearing is held, any party may submit written comments regarding EPA's determination by or before June 5, 1998.

**ADDRESSES:** If EPA receives one or more requests to testify, EPA will hold the May 8, 1998 public hearing announced above at EPA-Judiciary Square Building, first floor conference room, 501 3rd Street, NW., Washington, D.C. Any requests to testify at the public hearing, and/or any comments on the within the scope findings described above should be filed with Mr. Robert F. Montgomery, Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. All documents submitted in the Low-emission MDV waiver request can be found in Docket A-91-71; all documents submitted in the within the

scope request for the warranty amendments, including the request for a hearing recently received, can be found in Docket A-91-16. Copies of the Decision Document (which discusses both the waiver and the within the scope determination) can be obtained from EPA's Engine Programs and Compliance Division by contacting Robert M. Doyle, as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

#### FOR FURTHER INFORMATION CONTACT:

Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 564-9258, FAX:(202) 565-2057, E-Mail:

Doyle.Robert@EPAMAIL.EPA.GOV.

#### SUPPLEMENTARY INFORMATION:

#### I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Mobile Sources (OMS) Home page (<http://www.epa.gov/OMSWWW/>). Users can find these documents by accessing the OMS Home Page and looking at the path entitled "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

#### II. Procedures for Public Participation

Any party desiring to make an oral statement on the record at the tentatively scheduled public hearing should submit ten (10) copies, if feasible, of the proposed testimony and other relevant material to Mr. Robert F. Montgomery at the address listed above not later than May 1, 1998. In addition, the party should submit 15 copies, if feasible, of the planned statement to the 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 without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious or to impose reasonable 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 hearing is held, EPA will keep the record open until June 5, 1998. Upon expiration of the comment period, EPA will make a final determination on the CARB within the scope request, based on the record of the public hearing (if any), relevant written submissions, and other information deemed pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible 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 as 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 CBI 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.

### III. Low-Emission MDV Standards Waiver Request

I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program which will (1) establish three new categories of low-emission MDVs based on levels of exhaust emission standards; "Low-Emission Vehicle" (LEV), "Ultra Low-Emission Vehicle" (ULEV), and "Zero-Emission Vehicle" (ZEV); (2) require manufacturers to certify certain minimum percentages of LEV-MDVs and ULEV-MDVs beginning in the 1998 Model Year, reaching a maximum percentage requirement in Model Year 2003, and (3) establish production credit banking and trading provisions to offer

flexibility to manufacturers unable to meet the minimum percentages.<sup>1</sup> A comprehensive description of the California low-emission standards and accompanying program can be found in the Decision Document for this waiver and in materials submitted to the Docket by California and other parties.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Information presented to me by parties opposing California's waiver request did not demonstrate that California arbitrarily or capriciously reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No

<sup>1</sup>The waiver request EPA grants today, which pertains to low-emission MDVs, is part of a comprehensive waiver request from California for its LEV program, which includes both light-duty vehicles (LDVs) such as passenger cars and light-duty trucks, and MDVs which are typically large trucks and other vehicles up to 14,000 lbs Gross Vehicle Weight Rating. On January 13, 1993 (58 FR 4166) EPA granted a waiver for the low-emission LDV component of California's program, and deferred action on the MDV component of the program (the subject of today's waiver). EPA chose to defer this action because at the time of the LEV waiver grant, an earlier waiver concerning MDVs (Docket A-91-55) was pending. This earlier request involved amendments to the California program which established new emission standards for MDVs in Model Year 1995 and beyond, and new accompanying certification and compliance test procedures and durability requirements. Because the low-emission MDV standards are amendments to the MDV standards considered in the request of Docket A-91-55, EPA needed to decide the earlier request before action on the low-emission MDV standards could be taken. On September 16, 1994 (announced in 59 FR 48625, September 22, 1994), EPA granted a waiver of Federal preemption to California's 1995 and beyond MDV standards.

information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information demonstrating that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. Information presented to me by parties opposing California's waiver request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by June 15, 1998. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

#### IV. Warranty Amendments Within the Scope Request

I have determined that California's amendments to its warranty statute and regulations as applied in the 1994 model year and beyond are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act. The basis for this determination is described in detail in the Decision Document, which can be found in the docket for this action. The substantive amendments to the emission warranty requirements which are applicable under California state law to 1990 and subsequent model year passenger cars, light duty trucks and medium-duty vehicles require manufacturers to provide the following:

(1) *An emission-related "defects warranty" for three years or 50,000 miles.* The manufacturer must warrant that the vehicle is free from defects in materials and workmanship which cause the failure of a warranted part to be identical in all material respects to the part described in the application for certification. The emission-related parts that are defective within the period of warranty coverage must be repaired or replaced by the manufacturer at no cost to the vehicle owner. Thus it need not be shown that the defect causes the vehicle to exceed the applicable emission standards, in order to obtain such replacement or repair by the manufacturer without charge to the owner.

(2) *A seven year or 70,000 mile "extended defects warranty" for emission-related parts costing more than \$300 to replace.* Manufacturers are required to identify those emission-related components on the existing Emissions Warranty Parts List that cost the consumer over \$300 to replace as of the time of certification and to warranty those for a period of seven years/70,000 miles.

(3) *A "performance warranty" for three years or 50,000 miles, whichever first occurs.* Manufacturers must warrant the vehicle will pass an inspection and maintenance (SMOG CHECK) test. If a vehicle fails the SMOG CHECK test the manufacturer will be liable for the cost of the part, labor, diagnosis, and the SMOG CHECK retest to ensure the vehicle passes. The manufacturer would not be liable for the failure if it demonstrates that the failure was directly caused by abuse, neglect, or improper maintenance or repair.

(4) *A prescribed Introductory Statement for owners.* Manufacturers of all 1991 and subsequent model vehicles produced after January 24, 1991 must include in their warranty booklet a

specified, standardized statement that explains in layman's terms the vehicle owner's rights and responsibilities regarding the emission control system warranty. The manufacturer's detailed warranty statement must follow this specified statement.

(5) *Common Nomenclature.* All emission-related service and certification documents, printed or updated by a manufacturer starting with the 1993 model year, must conform to the nomenclature and abbreviations in SAE publication J1930 "Diagnostic Acronyms, Terms, and Definitions for Electrical/Electronic Systems".

(6) The emission warranty requirements for vehicles and engines other than 1990 and subsequent model passenger cars, light-duty trucks, and medium-duty vehicles will be continued without substantial change. These requirements cover pre-1990 and subsequent model year motorcycles and heavy-duty vehicles and engines.

In a February 4, 1991 letter to EPA, CARB notified EPA of the above-described amendments to its warranty regulations affecting 1990 model year and later vehicles, and requested that EPA confirm that these amendments to its warranty statute and regulations, and new regulations requiring the use of common nomenclature in certification and in-use documentation are within the scope of existing waivers of Federal preemption.<sup>2</sup> The Executive Officer stated that "[t]he regulations do not undermine the Board's prior determination that the state standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."<sup>3</sup> This statement, however, referred to a finding made by the Board before the passage of the Federal Clean Air Act Amendments of 1990 (CAAA), which required that EPA promulgate new, more stringent Federal tailpipe emission standards for light-duty vehicles and light-duty trucks beginning in the 1994 model year.<sup>4</sup>

<sup>2</sup> Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated February 4, 1991, at 2 (hereinafter "CARB letter").

<sup>3</sup> CARB letter at 5.

<sup>4</sup> The CAAA were signed into law on November 15, 1990. New certification and new in-use tailpipe emission standards for all light-duty vehicles and light-duty trucks, commonly referred to as Tier 1 standards, were prescribed in section 203 of the Amendments, which added new sections 202(g) and 202(h) to the Clean Air Act (CAA). On June 5, 1991 EPA published the Final Rule implementing the Tier 1 standards in the *Federal Register* at 56 FR 25724. In addition, section 202(j) of the Act requires promulgation of a Cold CO standard. 58 FR 9468 (July 19, 1993).

In addition, the Federal warranty requirements also changed beginning in the 1995 model year. The CAAA significantly modified the Federal light-duty

In its February 1991 request, CARB compared the California standards and the Federal standards as they stood prior to the CAAA; the Board did not consider the protectiveness of the California standards as compared to the new standards made applicable by the CAAA. Consequently, California, at the time of its request had not made an initial determination, that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards (including Tier 1) which apply in the 1994 and later model years.

On October 4, 1991, California requested a waiver of Federal preemption for its LEV program standards, which under California state law are applicable to 1994 and later model year vehicles (which also is when the phase-in of the new Federal Tier 1 standards begins).<sup>5</sup> In this request, California made a protectiveness finding with regard to the California standards as applicable to the 1994 and later model years compared to the applicable Federal standards (including Tier 1) as a basis for the waiver request addressing LEV standards. Because California had not made an initial determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards (including Tier 1) which apply in the 1994 and later model years in the earlier (February 1991) warranty request, CARB acknowledged, in its October 1991 request for a waiver for its LEV standards, the possibility that EPA may address the warranty amendments that were part of the February 1991 request as they apply only through the 1993 model year.<sup>6</sup>

EPA announced, on August 14, 1992, its determination that California's amendments to its warranty program were within the scope of previous waivers only through the 1993 model year.<sup>7</sup> EPA also stated that, provided California was granted a waiver of

requirements. Prior to the amendments the period of warranty coverage was generally 5 years/50,000 miles. The CAAA, beginning in the 1995 model year, shortened the basic defects warranty period to 2 years/24,000 miles but extend it to eight years/80,000 miles in the case of catalytic converters, electronic emissions control units, onboard diagnostic (OBD) devices, and other pollution control devices that meet certain criteria and are designated by the Administrator as a "specified major emission control component." CAA Section 207(i).

<sup>5</sup> California Proposed Regulations for Low Emission Vehicle Standards and Clean Fuels (August 13, 1990). Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991.

<sup>6</sup> Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991, p. 10, footnote 14.

<sup>7</sup> 57 FR 38502 (August 25, 1992).

Federal preemption for its LEV standards, the warranty regulations which were the subject of CARB's request for a within-the-scope determination would continue to be within the scope of existing waivers beyond the 1993 model year so long as they (1) do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards (2) do not affect the consistency of California's requirements with section 202(a) of the Act, and (3) raise no new issues affecting EPA's previous waiver determinations.

On January 7, 1993, EPA granted a waiver of Federal preemption for the low-emission LDV component of California's LEV program.<sup>8</sup> EPA also has waived Federal preemption for California's standards applicable to 1995 and later model year MDVs.<sup>9</sup> In today's decision, EPA waives preemption for California's MDV standards for 1998 and later model year vehicle and engines which are part of the LEV Program. EPA has previously determined that California's earlier emission warranty regulations were within the scope of previous waivers.<sup>10</sup> Consistent with these previous determinations, EPA now has determined that emission warranty regulations, which are the subject of CARB's February 4, 1991 letter, as applied through the 1994 model year and beyond to passenger cars, light-duty trucks and medium-duty vehicles and engines, are within the scope of earlier waivers granted for standards.

With regard to the 1994 and later model years, these amendments do not undermine California's determination that its standards, in the aggregate are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the EPA's previous waiver determination. Thus these amendments are within the scope of previous waivers determinations.<sup>11</sup> A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this

reason, I hereby determine and find that this is a final action of national applicability.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: April 6, 1998.

**Richard D. Wilson,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 98-10010 Filed 4-14-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5996-3]

### Notice of Proposed Assessment of Clean Water Act Class I Administrative Penalty to Campbell Soup Company and opportunity to comment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative penalty assessment and opportunity to comment.

**SUMMARY:** EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's proposed Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the

public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class I order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Campbell Soup Company, located at 6200 Franklin Boulevard, Sacramento, California 95824; EPA Docket No. CWA-IX-FY98-01; filed on April 2, 1998, with Ms. Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1391; proposed penalty of \$10,445 for failure to submit self-monitoring reports with toxic organics results in 1995, 1996 and part of 1997.

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of EPA's Consolidated Rules, review of the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: August 6, 1998.

**Alexis Strauss,**

*Acting Director, Water Division, Region IX.*

[FR Doc. 98-10004 Filed 4-14-98; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5997-3]

### Underground Injection Control Program; Hazardous Waste Land Disposal Restrictions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of approval of application for a case-by-case extension

<sup>8</sup> 58 FR 4166 (January 13, 1993).

<sup>9</sup> 59 FR 48625 (September 22, 1994).

<sup>10</sup> 37 FR 14831 (July 25, 1972); 44 FR 61096 (October 23, 1979); 51 FR 12391 (March 26, 1986); 51 FR 15961 (April 22, 1986).

<sup>11</sup> *Id.*