

DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 566-1742. A reasonable fee may be charged by EPA for copying docket material.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site (<http://www.epa.gov/OTAQ>). Users can find these documents by accessing the OTAQ website 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.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Certification and Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564-9256. Fax: (202) 565-2057. E-Mail address: Dickinson.David@epa.gov.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of federal preemption pursuant to section 209(b) of the Act for the LEV II Amendments¹ to its LEV program. As

explained further in EPA's Decision Document for today's decision, CARB had originally submitted a request for a waiver of federal preemption for amendments made to its ZEV program (1999 ZEV Amendments). CARB subsequently sought a "within the scope of previous waivers" confirmation from EPA for its 1999 ZEV Amendments. Subsequently, CARB also initially sought a within the scope of previous waivers confirmation for its 2001 ZEV Amendments when they were adopted. As explained in EPA's notice dated September 26, 2002 (67 FR 60680), CARB withdrew its requests for any EPA consideration of its 1999 and 2001 ZEV Amendments. By today's decision EPA makes no findings regarding such Amendments.

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

Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes" (all portions of this incorporated document that may pertain to ZEVs only are not considered by EPA in this determination and all portions of this incorporated document that pertain to both ZEVs and HEVs or to other types of vehicles are only considered to the extent they do not pertain to ZEVs); section 1965 and the incorporated "California Motor Vehicle Emission Control and Smog Index Label Specifications"; section 1968.1; 1976 and the incorporated "California Evaporative Emission Standards and Test Procedures for 1978 through 2000 Model Motor Vehicles" and the new "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles" (EPA's decision applies to CARB's evaporative emission standards and test procedures only for 2004 and later model years); sections 2037, 2038, 2062 and the incorporated "California Assembly-Line Test Procedures for 1998 through 2000 Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles" and "California Assembly-Line Test Procedures for 2001 and Subsequent Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles"; section 2101 and the incorporated "California New Vehicle Compliance Test Procedures"; and sections 2106, 2107, 2110, 2112, 2114, 2119, 2130, 2137-2140, and 2143-2148. EPA also includes CARB's "LEV II follow-up amendments" in today's waiver determination. These amendments, adopted December 27, 2000, were to section 1961 and the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" and as explained below, have the effect of not allowing a manufacturer to certify a "California-only" vehicle family to California exhaust emission standards that are less stringent than the federal standards to which an equivalent federal model is certified—in such case the model sold in California must meet the federal exhaust emission standards to which the federal model is certified. CARB's waiver request did not include nor does today's waiver determination include other provisions of the LEV II follow-up amendments such as the California emission standards for heavy-duty Otto-Cycle engines that were harmonized with standards adopted by EPA and are found at section 1956.8.

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 its LEV II Amendments do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No information has been submitted to demonstrate that California's standards, in the aggregate, are less protective of public health and welfare than the applicable Federal standards. Thus, EPA cannot make a finding that CARB's determination, that its LEV II Amendments are, in the aggregate, at least as protective of public health and welfare, is arbitrary and 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 LEV II Amendments. No 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 that the requirements of its LEV II Amendments are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's LEV II Amendments are inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

This 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

¹ As set forth in the August 5, 1999 adoption of or amendments to Title 13, California Code of Regulations (CCR), section 1961, the incorporated "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," and, with respect to HEVs (hybrid-electric vehicles), the incorporated "California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes" (all portions of this incorporated document that may pertain to ZEVs only are not considered by EPA in this determination and all portions of this incorporated document that pertain to both ZEVs and HEVs or to other types of vehicles are only considered to the extent they do not pertain to ZEVs); section 1900; section 1960.1 (with the exceptions noted in CARB's letter to David Dickinson, EPA, dated August 16, 2002), the incorporated "California Non-Methane Organic Gas Test Procedures," "California Exhaust Emission Standards and Test Procedures for 1988 through 2000 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" and "California Non-Methane Organic Gas Test Procedures" (with the exceptions noted in CARB's letter to David Dickinson, EPA, dated August 16, 2002), and, with respect to HEVs, "California