

Email between Staff at EPA Office of Transportation and Air Quality

Date: 10/17/2007

Subject : FollowUp to This Morning

see attached

Homework Assignment.doc

[ATTACHMENT]

Legal Arguments [...--this can be made shorter by cutting out the alternative interpretation by the autos]

- Under section 209(b), EPA must, after notice and comment, waive preemption for California (CA) standards unless EPA makes any of the following three findings:
 - CA was arbitrary and capricious in determining that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards;
 - CA does not need such state standards to meet compelling and extraordinary conditions; or
 - CA standards are not consistent with CAA section 202(a)
- Past Practice
 - Nearly 40 years of EPA waiver practice; approximately 95 waiver actions
 - No complete denials – 2 partial denials – test procedure issues; 1 partial – grant of one pollutant and denial for 1 model year for other 2 pollutants [pre-1977]; 1 partial – held over evaporative emissions standard for 1 model year; 1 partial – excluded CNG/LPG due to CARB miscue; 1 granted waiver through 2011 (but not later) model years (ZEV)
 - No partial denials based on anything other than lead time or technological feasibility
 - Under Reilly Administration, EPA granted nine decisions. The most notable two decisions approved California's LEV 1 program and their 0.25 g/mi HC standard for 1988 and later model year vehicles.
- Deference: Traditional interpretation of statute provides CA the broadest possible discretion in developing its program. EPA has only narrow and circumscribed discretion to deny a waiver to California.
 - Consistent EPA interpretation since beginning of waiver program
 - Legislative history – Statute intended to give CA broadest possible discretion – CA to “act as a laboratory”
 - Court decisions affirm this approach

- **Burden of Proof** – Those opposing waiver must affirmatively demonstrate that CA was arbitrary and capricious in its protectiveness determination with clear and compelling evidence. Burden also on those opposing for other two waiver criteria
 - MEMA I “...California regulations,..., when presented to the Administrator are presumed to satisfy the waiver requirements and ... the burden of proving otherwise is on whoever attacks them.”
- **“Protectiveness”**
 - We can only deny waiver under section 209(b)(1)(A) if we find CA was arbitrary and capricious in making its “in the aggregate” protectiveness finding.
 - Traditional review is a direct comparison to federal standards
 - CA standards more stringent than non-existent (or likely contemplated) EPA standards
 - Modified review suggested by manufacturers is to look more broadly at effects of standards on pollution
 - CA has provided an analysis indicating that its standards will decrease ozone precursors
- **“Compelling and Extraordinary Conditions”**
 - Traditional interpretation
 - EPA looks at need for CA program as a whole, not pollutant by pollutant or individual standards
 - Need for CA motor vehicle program as a whole not questioned
 - Alternative Interpretation from Manufacturers
 - Look at need for individual standards, at least for GHGs
 - GHG Conditions
 - CA provides broad range of climate change impacts in CA (water storage, agricultural, etc) that CA contends are extraordinary when taken in their totality
 - Ozone – CA identified benefits as part of GHG rule
 - CA provided data indicating GHG standards directly reduce ozone precursors and argues that reduction in GHG will be beneficial for ozone problem
 - EPA will likely make similar statements in federal rule
 - CA ozone problem has always been considered compelling and extraordinary
 - EPA and courts have previously found that we should not second-guess CA policy choices – Supreme Court Mass v EPA opinion echoes idea that even small reductions are helpful
- **“Consistency with section 202(a)”**
 - Traditional review: technological feasibility considering leadtime
 - Auto manufacturers did not support arguments with factual evidence that standards were infeasible or would make vehicles less safe

- CA provided factual evidence that near-term and long-term standards can be met with technology already in field without reducing vehicle size
- CA factual evidence indicates that standards are feasible given leadtime provided
- Vermont court decision – favors states’ estimates of technology and costs
- Modified Review Suggested by Manufacturers: CA GHG standards is inconsistent with section 202(a) until EPA makes a finding of endangerment
 - Burden on those opposing waiver to provide evidence that CA regs are inconsistent with 202(a). Under this option, we would argue that those opposing the waiver would have to show that GHG do not endanger public health or welfare.

President’s “20 in Ten” Targets

The President, in the 2007 State of the Union Address, articulated a new national goal to displace 20 % of the U.S. gasoline consumption within ten years, and to do so by mandating the use of alternative and renewable fuels, and increasing the efficiency of passenger vehicles. The White House fact sheet accompanying the announcement described a strategy for achieving this goal by mandating a total volume of 35 billion gallons of alternative and renewable fuels and increasing fuel economy standards up to 4 % per year, starting in 2010 for passenger cars and 2012 for light duty trucks. This results in the following values (these are unadjusted; “real world” mileage would be on average approximately 20% less)

| <u>YEAR</u> | <u>CAR</u> | <u>TRUCK</u> |
|-------------|------------|--------------|
| 2009 | 27.5 | 23.1 |
| 2010 | 28.6 | 23.5 |
| 2011 | 29.7 | 24.0 |
| 2012 | 30.9 | 25.0 |
| 2013 | 32.2 | 26.0 |
| 2014 | 33.5 | 27.0 |
| 2015 | 36.2 | 29.2 |
| 2016 | 37.6 | 30.4 |

This would equate to a combined standard for cars and trucks of 33.6 mpg in 2017.

[FINAL PAGE OF ATTACHMENT]

Talking Points

- I know you are under extraordinary pressure to make the California waiver decision, and I don’t mean to add to it

- But this likely to be among the two biggest decisions you get to make in the job (along with the greenhouse gas rule you are working on)
- The eyes of the world are on you and the marvelous institution you and I have had the privilege of leading; clearly the stakes are huge, especially with respect to future climate work
- I understand the history and the legal standards for this decision—I made a number of them myself while I was there, including the waiver for the LEV program, which these standards would be a part of.
- From what I have read and the people I have talked to, it is obvious to me that there is no legal or technical justification for denying this. The law is very specific about what you are allowed to consider, and even if you adopt the alternative interpretations that have been suggested by the automakers, you still wind up in the same place
- But I think there must be a win-win here, and you should find it and seize it.....for the sake of the environment and the integrity of the agency
- Word is out about the option to grant the waiver for the first three years and then defer the subsequent years. I don't have the details, but this sounds like the seed for a "grand bargain", and would put and the agency in the driver's seat to craft a national solution: something that my automaker contacts and California both say they want.
- You have to find a way to get this done. If you cannot, you will face a pretty big personal decision about whether you are able to stay in the job under those circumstances. This is a choice only you can make, but I ask you to think about the history and the future of the agency in making it. If you are asked to deny this waiver, I fear the credibility of the agency that we both love will be irreparably damaged.

EPA Email

From: Staff at EPA Climate Change Division
To: Staff at EPA Climate Change Division
CC:
Date: 10/31/2007 12:54 PM
Subject: Fw: Outcome of yesterday's CA waiver meeting with Johnson

There was still no final decision but everyone coming out of the meeting had a better 'vibe' about the direction compared to the last meeting, when Johnson said he wasn't even leaning one way or the other.

I think progress was made in a number of areas where Johnson expressed concern. On safety issues, which was something new that Johnsons raised at the last meeting, I think the info OATQ provided comforted him that compromised safety should not be a significant issue as a result of making cars more efficient via GHG standards.

On the issue of how different our eventual federal rule will be compared to the CA rule, OATQ showed information that the standards may not be so different, especially in the near term, which addressed his concern about manufacturers having to build two fleets to meet two separate standards. OATQ made the qualitative argument that if the standards are close it's unlikely manufacturers would be forced into producing different fleets.

On compelling and extraordinary conditions, I got to chime in again. In addition to the argument that climate change may exacerbate CA's tropospheric ozone problem --- for which CA has historically demonstrated compelling and extraordinary conditions --- I think Johnson now better appreciates that there are additional conditions in CA that make them vulnerable to climate change: water resources (we spent time talking about this); wildfires (the recent news I think is helping to push him); long coast line; largest population; largest economy; largest ag sector. His specific question at our last meeting was how much of our compelling and extraordinary argument is based on the fact that trop O3 will be made worse.

... said they need 6 weeks time to complete the waiver decision (I assume this I for some interagency review??), which means we need a final decision very soon if we're to stick with having a decision by year's end....

...

EPA Email

From: Bill Wehrum
To: Staff at EPA Office of Transportation and Air Quality and EPA Office of Air and Radiation
CC: Staff at EPA Office of General Counsel
Date: 3/15/2006 4:45 PM
Subject: CA Vehicle GHG Regulations

... -- I took another look at the briefing materials from late January. I think we should assert the existence of preemption and propose to deny the waiver based on the absence of compelling and extraordinary conditions. This determination would be specific to the GHG standard and should not generally apply to the other aspects of their LEV rule. I think it makes sense to ask for comment on some of the other key questions presented in the briefing, but not present them as our proposed alternative.

Having said that, I also think that this issue goes far beyond OAR. ..., will you please set up a briefing with Marcus ASAP to give him the background and seek his concurrence. ..., I'd like to adjust the January briefing package to include the recommended approach described above. We can talk about it more before going to Marcus if you or others have concern with this approach. Lastly, we will need to consult with our interagency breatheren before going forward with a Fed. Reg. notice. I'll get this started once we've touched base with Marcus.

Thanks.

Redacted portion of May 1, 2007 Power Point Briefing for Administrator Johnson

Application of Waiver Criteria – Compelling and Extraordinary Conditions

- EPA traditionally looks broadly at whether CA conditions such that it still needs its own motor vehicle emission program. We have not examined the need and conditions for specific standards or specific air pollution problem
- Congress wanted CA to be afforded “the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare”
 - This allowed CA’s CO standards to be less stringent than EPA standards, to facilitate NOx standards that were more stringent than the federal.
- CA has submitted an extensive record concerning the impact of climatic conditions on CA, including: coastal resources and erosion, saltwater intrusion on delta areas, levee collapse and flooding, decrease in winter snow pack reducing spring and summer runoff for municipal and agricultural uses.
- CA has submitted justifications based on impact on high ozone.

California Request for a Waiver of Preemption of GHG Standards

April 30, 2007

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BACKGROUND SUMMARY

- In 2004, CA adopted standards limiting total GHGs from cars and light trucks
- Eleven other states have adopted CA's GHG Regs
- On December 21, 2005, California requested that EPA grant a waiver of preemption under Clean Air Act § 209(b)
- On April 30, 2007, EPA published a notice of a public hearing and opening of comment period regarding California's request

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CA'S GHG REGULATIONS

- “CO2 equivalent” standards include emissions of all GHG from operating vehicle and emissions from air conditioning. For alternative fuel vehicles, CA gives credit for lower upstream GHG emissions from fuel.
- GHG fleet average standards incorporated into preexisting LEV II vehicle standards
- Standards phased in from 2009 to 2016

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CAA PREEMPTION OF STATE EMISSION STANDARDS

- Section 209(a) prohibits states from adopting “any standards relating to the control of emissions from new motor vehicles...subject to this part.”
- Under section 209(b), EPA “shall” waive “application of this section” -preemption under 209(a) – if CA makes a specified protectiveness finding. However, “no waiver shall be granted if” EPA makes any of three findings:

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CRITERIA FOR 209(b) WAIVER

- California was “arbitrary and capricious” in determining that its standards will be, in the aggregate, at least as protective of public health or welfare as applicable federal standards;
- California does not need such state standards to meet compelling and extraordinary conditions; or
- Such standards...are not consistent with section 202(a) of the Act.
- Text of 209, legislative history, case law, and consistent EPA interpretation since beginning of waiver program – statute provides CA the broadest possible discretion in developing it’s program, and EPA has only narrow and circumscribed discretion to deny a waiver to California.

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EPA Review Limited to Criteria in 209(b)

- The text of 209(b) is clear – EPA must grant a waiver unless it makes one of the three specified findings. That means the only basis for a denial is one of the three findings.
- EPA has consistently interpreted 209(b) as not allowing EPA to base a denial on anything other than the three findings. (See MEMA, MEMA III)
- Preemption under EPCA is not one of the listed findings, hence EPA could not deny a waiver on the grounds that CA is otherwise preempted under EPCA. MEMA “essentially agreed” with EPA’s determination regarding other federal statutes, but it did not resolve issue of violation of the Constitution as a basis for denial.

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Application of Waiver Criteria

- **Legislative History: 1967:** CA was ahead of the federal gov't in regulating motor vehicles, made "pioneering efforts" in auto pollution control. CA also had "compelling and extraordinary circumstances sufficiently different from the nation as a whole to justify standards ... which might need to be more stringent than federal." Congress preserved CA's regulatory role and protected industry from many different state regulations. Benefits to nation were CA able to continue its program and proved benefits to that state; nation would benefit from CA experience as a laboratory that may help with later federal standards; while there are differing standards, the general consumer of the nation not paying for CA car costs; industry faced with only one potential variation from the federal program. 209(a) preemption and 209(b) waiver for CA reflect this compromise.
- **1977:** Affirmed 1967 reasoning. Affirmed EPA's prior "liberal construction" of 209(b) to permit CA to proceed with its own program. Purpose of 1977 amdts. was to "ratify and strengthen the CA waiver provision and to affirm the underlying intent of that provision, i.e. to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare."
- Based on this, EPA and D.C. Cir. have interpreted the waiver provision to provide CA considerable discretion to create its own distinct emissions program. It was Congress's "intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare." MEMA.
- CAA starts with assumption CA receives a waiver if it makes the protectiveness finding. Burden of proof is on parties opposing a waiver, not on CA or EPA. EPA does not need to make an affirmative finding to grant waiver; it has to grant a waiver unless it makes one of the specified negative findings. MEMA

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Application of Waiver Criteria – “Protectiveness”

- Protectiveness finding has been made by comparing stringency of EPA regulations to California’s regulations
- Where EPA has no “comparable” regulations, California’s regulations have been deemed more protective
- Section 202(b)(2) confirms this method, it equates stringency of standards to protectiveness finding
- To deny, EPA would have to find that CA’s determination was arbitrary and capricious, based on “clear and compelling evidence” that CA acted unreasonably in evaluating the risks of pollutants (1977 Leg. Hist., MEMA)

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Application of Waiver Criteria – “Protectiveness” (continued)

- EPA previously accepted CA’s LEV II protectiveness finding
- There are no EPA standards for GHGs.
- To deny EPA would have to find that Cal. was arbitrary and capricious to determine that LEV II with GHG standards is at least as protective, where EPA already found LEV II without GHGs standards is as protective and there has been no change in the federal standards that the comparison is based on.
- The comparison is made to EPA’s standards, not other federal standards – 209(b)(3) makes it clear that “applicable Federal standards” refers to EPA standards. (Any legislative history.??)
- MEMA held that public health and welfare, for purposes of the protectiveness finding, refers to the effects of the pollution itself, not to the social effects of the emissions control program. That would mean safety and other impacts of the car control strategies are not part of the “protectiveness” comparison.

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Application of Waiver Criteria – “Compelling and Extraordinary Conditions”

- EPA traditionally looks broadly at whether CA has conditions such that it still needs its own motor vehicle emission program. We have not examined the need and conditions for specific standards or specific air pollution problem.
- This interpretation is consistent with the language in 209(b)(1)(B). The interpretation harmonizes this provision and the 1977 amendments that allowed CA to receive a waiver for standards that were less stringent than the federal standards as long as the group of standards were “in the aggregate” at least as stringent as comparable federal standards.
- Interpretation is consistent with Congressional intent to provide CA broad discretion to develop its own program, with limited ability of EPA to deny a waiver.
- Congress wanted to allow CA “broad discretion to weigh the degree of health hazards from various pollutants.” This allowed CA’s CO standards to be less stringent than EPA standards, to facilitate NOx standards that were more stringent than the federal.
- Hard to reconcile requiring CA to show that it has “compelling and extraordinary conditions” for each specific pollutant but also allowing standard for some pollutants to be less stringent than the federal standards.
- EPA has consistently applied this interpretation since 1977 amdots. Decision prior to 1977 amdots also consistent with this approach, e.g. approved a waiver for HC, NOx and CO standards, based on compelling and extraordinary ozone conditions, which are unrelated to CO.

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Application of Waiver Criteria – “Compelling and Extraordinary Conditions” (cont.)

- Alternative interpretation – have to show compelling and extraordinary conditions for each pollutant, or at least for GHGs.
- Could be read as consistent with text of 209(b)(1)(B), but hard to harmonize it with the “in the aggregate” provision on protectiveness and the allowance of standards less stringent than federal standards.
- Would narrow CA’s discretion, hard to show consistent with Congressional intent.

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Application of Waiver Criteria – “Compelling and Extraordinary Conditions” (cont.)

- EPA would need to justify decision to look specifically at “compelling and extraordinary conditions” and need for GHG standards, given the clear break with previous practice.
- Justification would need to explain why the alternative interpretation is a better way to meet the goals of 209 – providing broad discretion to CA, get benefits for country from a “pioneer”, limit burden on industry by having only two programs, etc.
- Rationale in denial of 202 petition - global (and relatively uniform) nature of GHG ambient concentrations, need for federal climate change strategy, uncertainty of science, foreign policy implications – would need to tie them to the goals of section 209. Not clear how such an interpretation would impact CA ability to regulate other pollutants like CO.
- Also, would such a decision require a “hybrid” type program where manufacturers of CA cars would have to meet EPA standards for some pollutants and CA standards for other pollutants?

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Application of Waiver Criteria – “Compelling and Extraordinary Conditions” (cont.)

- Even if EPA hold that the GHG standards must meet the “compelling and extraordinary conditions” criterion separately, the burden is on opponents of a waiver, and EPA must affirmatively find that CA does not need the standards or that GCC is not a compelling and extraordinary condition in CA.
 - EPA has consistently interpreted “need” criterion as requiring only slight benefit – we do not micromanage CA’s decisions regarding best way to get emission reductions. Consistent with broad discretion given to CA to make the policy judgments of what to control and how much.
 - Regarding “compelling and extraordinary conditions,” CARB identifies impact of global climate change as significant environmental and public health issue in their request, and addresses particular effects on California – notes effect of climate change on several conditions, such as snow melt, agriculture, coastal erosion and ozone.
 - Legislative history notes that waiver provision adopted because CA has demonstrated compelling and extraordinary circumstances “sufficiently different from the Nation as a whole to justify” its own standards.
 - Comparison is to nation as a whole, to other 49 states as a group, not just to any one other coastal state.
 - EPA would have to find that we know enough about GCC and its impacts to determine now that in the future CA will not face compelling or extraordinary conditions from GCC, including impacts on ozone.
 - Not clear what standard of proof would apply – clear and compelling evidence or a lesser standard like preponderance of the evidence. MEMA

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Application of Waiver Criteria – “Consistency with Section 202(a)”

- In past waivers, EPA has stated, based on the legislative history, that consistency with section 202(a) requires that CA provide adequate lead time to permit the development of the necessary technology, given the cost of compliance within that time, and that State test procedures cannot impose certification requirements that are inconsistent with Federal requirements.
- D.C. Cir. has accepted this interpretation, but in one case the DC Circuit found that an explicit lead time requirement on EPA regulations in §202 also meant that CA had to provide at least the same amount of lead time to be consistent with §202(a)

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Application of Waiver Criteria – “Consistency with Section 202(a)” (cont)

- CA provides evidence that standards are technologically feasible
- Burden is on those challenging waiver to show that standards are not feasible
- CA need not show that standards are feasible for every vehicle currently in the market (particularly given that this is an averaging program)
- “[A]s long as feasible technology permits the demand for new [vehicles] to be generally met, the basic requirements of the Act would be satisfied, even though it might occasion fewer models... The driving preferences of hot rodders are not to outweigh the goal of a clean environment.” (Int. Harvester)

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Application of Waiver Criteria – “Consistency with Section 202(a)” (cont)

- Supreme Court indicated that EPA has the authority to regulate GHGs under section 202(a)
- It will be hard to argue that feasible CA GHG standards are inconsistent with 202(a)
- Until we make an endangerment finding for GHGs, we cannot issue standards under 202(a).
- To find that CA GHG standards are inconsistent with 202(a) until we make an endangerment finding would mean CA could never set standards for pollutants we had not regulated. EPA has routinely granted waivers where no comparable EPA standard existed (see first SORE waiver), and the legislative history supports this approach. (need to check LH more).
- We would likely need to affirmatively find that GHGs are not an endangerment and we have no authority under 202(a).
- We would also need to interpret “consistency” as being broader than previously interpreted.

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LEXSTAT 42 USCA 7543

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*** CURRENT THROUGH P.L. 110-19, APPROVED 4/23/2007 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 85. AIR POLLUTION PREVENTION AND CONTROL
EMISSION STANDARDS FOR MOVING SOURCES
MOTOR VEHICLE EMISSION AND FUEL STANDARDS

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42 USCS § 7543

§ 7543. State standards

(a) Prohibition. No State or any 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 [42 USCS §§ 7521 et seq.]. 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 retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver.

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that--

(A) the determination of the State is arbitrary and capricious,

(B) such 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 this part [42 USCS § 7521(a)].

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this title [42 USCS §§ 7521 et seq.].

(c) Certification of vehicle parts or engine parts. Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 207(a)(2) [42 USCS § 7541(a)(2)], no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) Control, regulation, or restrictions on registered or licensed motor vehicles. Nothing in this part [42 USCS §§ 7521 et seq.] shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

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(e) Nonroad engines or vehicles.

(1) Prohibition on certain State standards. No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act--

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles.

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that--

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of title I [42 USCS §§ 7501 et seq.] may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if--

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

HISTORY:

(July 14, 1955, ch 360, Title II, Part A, § 209 [208], as added Nov. 21, 1967, P.L. 90-148, § 2, 81 Stat. 501; Dec. 31, 1970, P.L. 91-604, §§ 8(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1705, 1713; Aug. 7, 1977, P.L. 95-95, Title II, §§ 207, 221, 91 Stat. 755, 762; Nov. 15, 1990, P.L. 101-549, Title II, Part A, § 222(b), 104 Stat. 2502.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act July 14, 1955, ch 360, 69 Stat. 322, as generally amended by Act Dec. 17, 1963, P.L. 88-206, 77 Stat. 392; which formerly appeared as 42 USCS §§ 1857 et seq. prior to its general amendment by Act Aug. 7, 1977, P.L. 95-95, 91 Stat. 685, and now appears as 42 USCS §§ 7401 et seq.

Explanatory notes:

This section formerly appeared as 42 USCS § 1857f-6a.

Former § 209 of Act July 14, 1955 (Act July 14, 1955, ch 360, Title II, § 209 as added Oct. 20, 1965, P.L. 89-272) was repealed by Act Oct. 15, 1966, P.L. 89-675, § 2(b), 80 Stat. 954, and formerly appeared as 42 USCS § 1857f-8.

Former § 209 of Act July 14, 1955 (Act July 14, 1955, ch 360, Title II, § 209 as added Nov. 21, 1967, P.L. 90-148) was redesignated as § 210 of Act July 14, 1955 by § 8(a) of Act Dec. 31, 1970, and appears as 42 USCS § 7544.

Amendments:

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1970. Act Dec. 31, 1970, in subsec. (a), substituted "this part" for "this title"; in subsec. (b), substituted "Administrator" for "Secretary"; and, in subsec. (c), substituted "this part" for "this title".

1977. Act Aug. 7, 1977 (effective upon enactment as provided by § 406(d) of such Act, which appears as 42 USCS § 7401 note) substituted subsec. (b) for one which read: "(b) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this title"; redesignated subsec. (c) as subsec. (d); and added new subsec. (c).

1990. Act Nov. 15, 1990 (effective on enactment, except as provided by § 711(b) of such Act, which appears as 42 USCS § 7401 note) added subsec. (e).

Redesignation:

Sections 8(a) and 11(a)(2)(D) of Act Dec. 31, 1970 redesignated this section, former § 208 of Title II of Act July 14, 1955, to be § 209 of Part A of Title II of Act July 14, 1955.

Other provisions:

Modification or rescission of rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, and other actions. Act Aug. 7, 1977, P.L. 95-95, Title IV, § 406(b), 91 Stat. 795, which appears as 42 USCS § 7401 note, provided that all rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to Act July 14, 1955, ch 360, 69 Stat. 322, which appears generally as 42 USCS §§ 7401 et seq. (for full classification of such Act, consult USCS Tables volumes), as in effect immediately prior to the date of enactment of Act Aug. 7, 1977, should continue in full force and effect until modified and rescinded in accordance with Act July 14, 1955, as amended.

Savings provisions. For savings provisions applicable to the amendments made to this section by Act Nov. 15, 1990, see Act Nov. 15, 1990, P.L. 101-549, Title VII, § 711(a), 104 Stat. 2684, which appears as 42 USCS § 7401 note.