

Dated: December 21, 2006.

Clay Sell,

Deputy Secretary.

**DEPARTMENT OF ENERGY, DEPUTY SECRETARY**

*In the Matter of: Western Area Power Administration Rates Extension for the Pacific Northwest-Pacific Southwest Intertie Project Transmission Service Rates*

**Order Confirming and Approving an Extension of the Pacific Northwest-Pacific Southwest Intertie Project Transmission Service Rates**

These transmission service rates were established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00-037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

**Background**

The existing Rate Schedules consist of separate firm transmission service rates for the 230/345-kilovolt (kV) and 500-kV transmission systems and a nonfirm transmission service rate for the 230/345/500-kV transmission system. Rate Schedules INT-FT2 and INT-NFT2, Rate Order No. WAPA-71, were approved for a 53-month period, beginning February 1, 1996, and ending September 30, 2000. Rate Order No. WAPA-91 extended these rate schedules for a 39-month period, beginning October 1, 2000, through December 31, 2003. Rate Order No. WAPA-108 extended these rate schedules again beginning January 1, 2004, through December 31, 2006. Rate Schedule INT-FT3, contained in Rate Order No. WAPA-76, was approved for

a 5-year period, beginning January 1, 1999, and ending December 31, 2003. Rate Order No. WAPA-108 extended this rate schedule beginning January 1, 2004, through December 31, 2006.

**Discussion**

Western's Desert Southwest Customer Service Region entered into a rate adjustment process with a **Federal Register** notice published on July 12, 2006, (71 FR 39310), which began the initial public consultation and comment period that ended on October 10, 2006. Western seeks an extension of the public process to provide more time to evaluate additional alternatives to the proposed rates. During the original consultation and comment period, Western was evaluating the impacts of a transmission sale arrangement that would have mitigated the proposed rate increase. However, a deferral of that transaction requires Western to assess the impact on the proposed rates as presented in the public process. The evaluation period and public process will take approximately 6 months to complete, including additional formal public forums. This makes it necessary to extend the current rates pursuant to 10 CFR part 903.23(b). Upon its approval, Rate Order No. WAPA-71 and Rate Order No. WAPA-76, previously extended under Rate Order No. WAPA-91 and Rate Order No. WAPA-108, will be extended under Rate Order No. WAPA-133.

**ORDER**

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing Rate Schedules INT-FT2, INT-FT3, and INT-NFT2 for firm and nonfirm transmission service from January 1, 2007, through December 31, 2007.

Dated: 12/21/06.

Clay Sell,

Deputy Secretary.

[FR Doc. E6-22268 Filed 12-27-06; 8:45 am]

**BILLING CODE 6450-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8263-2]

**California State Motor Vehicle Pollution Control Standards; Notice of Within-the-Scope Determination for Amendments To California's Zero-Emission Vehicle (ZEV) Standards and Notice of Waiver of Federal Preemption Decision for Other ZEV standards**

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

**ACTION:** Notice Regarding Confirmation of Within-the-Scope Finding and Waiver of Federal Preemption for Amendments to California's Emission Regulations for Zero Emission Vehicles.

**SUMMARY:** By this decision, issued under section 209(b) of the Clean Air Act, as amended, (hereafter "Act"), 42 U.S.C. 7543(b), the Environmental Protection Agency (EPA) today has determined that provisions of the California Air Resources Board's (CARB's) 1999-2003 amendments to the California Zero-Emission Vehicle (ZEV) regulations as they affect 2006 and prior model years (MYs) are within-the-scope of previous waivers of federal preemption granted to California for its ZEV regulations. In the alternative, EPA is also granting a waiver of federal preemption for these MYs. EPA is also granting California(s) request for a waiver of federal preemption to enforce provisions of the ZEV regulations as they affect 2007 through 2011 MYs. As explained below, EPA is also making a finding that although we believe it appropriate to grant a full waiver of federal preemption for the 2007 MY, we also believe it appropriate to consider the 2007 MY regulations within-the-scope of previous waivers of federal preemption as they apply to certain vehicles that were already subject to the preexisting ZEV regulations, with the exception that requirements pertaining to heavier light-duty trucks (LDT2s) are subject to a full waiver of federal preemption. EPA, by this decision, is not making any findings or determinations with regard to the 2012 and later model years under CARB's ZEV regulations.

**DATES:** Any objections to the findings in this notice regarding EPA's confirmation that CARB's ZEV amendments, as they affect the 2007 MY, are within-the-scope of previous waivers must be filed January 29, 2007. Otherwise, at the end of the 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these finding in a subsequent **Federal Register** Notice. 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 February 26, 2007. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

**ADDRESSES:** Any objections to the within-the-scope findings in this notice, applicable to the 2007 MY, should be filed with David Dickinson at the

address noted below. The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this decision are contained in Docket No. EPA-HQ-OAR-2004-0437. The docket is located at The Air Docket, room B-108, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone is (202) 566-1742. A reasonable fee may be charged by EPA for copying docket material.

Additionally, an electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at [www.regulations.gov](http://www.regulations.gov). After opening the [www.regulations.gov](http://www.regulations.gov) Web site, select "Environmental Protection Agency" from the pull-down Agency list, then scroll to "Keyword or ID" and enter EPA-HQ-OAR-2004-0437 to view documents in the record of this California request. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202)343-9256. E-Mail Address: [Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

**SUPPLEMENTARY INFORMATION:** In this decision, EPA has determined that the California Air Resources Board's (CARB's) 1999-2003 amendments to the California Zero-Emission Vehicle (ZEV) regulations as they affect 2006 and prior model years (MYs) are within-the-scope of previous waivers of federal preemption granted to California for its ZEV regulations pursuant to section 209(b) of the Act. In the alternative, EPA is also granting a waiver of federal preemption for such MYs. EPA is also granting California's request for a waiver of federal preemption to enforce certain provisions of the ZEV regulations as they affect 2007 through 2011 MY vehicles. Because the 2007 MY provisions are similar to the provisions for previous model years (with the exception of new requirements for LDT2s) EPA is also confirming that such

provisions are within-the-scope of previous waivers of federal preemption.

By letter dated September 23, 2004, CARB submitted a request seeking confirmation that the amendments as they pertain to the 2003-2006 model years are within-the-scope of previous waivers and seeking a waiver of Federal preemption as the amendments pertain to the 2007 and subsequent model years. The first set of amendments, the "1999 ZEV amendments," amended the existing requirement that at least 10 percent of a manufacturer's 2003 and subsequent MY passenger cars and lightest light-duty trucks (the LDT1 category) delivered for sale in California be ZEV vehicles with no emissions. The 1999 ZEV amendments added a new option for meeting the 10 percent requirement, including up to 60 percent of the ZEV obligation of a large-volume manufacturer—and 100 percent of the obligations of an intermediate-volume manufacturer—that could be met with allowances from partial ZEV allowance vehicles (PZEVs). The "2001 ZEV amendments" maintained a core ZEV component but reduced the numbers of vehicles required in the near-term and broadened the scope of vehicle technologies allowed and provided a variety of multipliers to earn credits for the early introduction of ZEVs. The third set of amendments to the ZEV regulation, the "2003 ZEV amendments," delayed the start of the percentage of ZEV requirements from MY 2003 to MY 2005, added the heavier light-duty trucks (LDT2s) into a manufacturers fleet population count, established an alternative compliance path for large-volume manufacturers that choose to focus on the development of fuel cell ZEVs, eliminated all references to fuel economy and vehicle efficiency from the 2001 ZEV amendments, and adjusted the credit structure for the various vehicles types. Finally, the fourth set of amendments include a requirement that 2006 and later MY battery EVs other than neighborhood electric vehicles (NEVs) be equipped with a conductive charger inlet port and an on-board charger, and a separate minor element from CARB's LEV II regulations which revised the standards for alternative fuel vehicles qualifying as partial ZEV allowance vehicles and for which CARB seeks a within-the-scope confirmation.

On January 18, 2005, a **Federal Register** notice was published announcing an opportunity for hearing and comment on CARB's request.<sup>1</sup> EPA received a request for a public hearing and conducted a hearing on February

17, 2005. The written comment period expired on March 29, 2005. After the close of the written comment period EPA also received a series of letters for the 2007 MY since EPA had not acted upon CARB's request at the time of the letters. Included in these letters, regarding the 2007 MY, was a new request from CARB to EPA seeking EPA's confirmation that the ZEV amendments as they affect the 2007 MY are within-the-scope of previous waivers. CARB did not include the requirements applicable to LDT2s that commence in the 2007 MY as part of this within-the-scope request.

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.

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 undermine California's determination that its standards, in the aggregate, are as at least as protective of public health and welfare as applicable Federal standards, does not affect its consistency with section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver decisions.

In its request letter to EPA, CARB stated that the amendments to its ZEV requirements will not cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. EPA received information during this proceeding that questioned whether the CARB ZEV amendments may be less protective for various reasons. EPA finds that the party opposing the within-the-scope determination and the waiver have not meet their burden of proof to demonstrate that the ZEV amendments undermine CARB's previous protectiveness determination or that CARB was arbitrary and capricious in its protectiveness determination. I cannot find that CARB's ZEV regulations would cause the California motor vehicle emission standards, in the

<sup>1</sup> 70 FR 2860 (January 18, 2005).

aggregate, to be less protective of public health and welfare than applicable Federal standards.

CARB also demonstrated continuing existence of compelling and extraordinary conditions, justifying the state's need for its own motor vehicle pollution control program. Because EPA has not received adverse public comment challenging the need for CARB's own motor vehicle pollution control program, I cannot deny the waiver based on a lack of a compelling and extraordinary conditions.

CARB stated in its request letters that the amendments do not raise any concerns of inadequate leadtime or impose any inconsistent certification requirements. EPA received information during this proceeding that questioned: whether the advance-technology partial-zero-emission vehicles (ATPZEVs) provisions of the ZEV requirements were of a type not consistent with § 202(a), and whether the partial-zero-emission vehicle (PZEV) and fuel-cell vehicle (FCV) provisions of the ZEV requirements were not consistent with § 202(a) due to considerations of technological feasibility, lead time, and cost. EPA finds that the party opposing the within-the-scope confirmation and the waiver of federal preemption has not met its burden of proof that the ZEV amendments are inconsistent with § 202(a). I cannot find that CARB's ZEV regulations, as noted, would cause the California motor vehicle emission standards to be inconsistent with § 202(a).

As explained further in the Decision Document, EPA also received comment that CARB's ZEV regulations raise "new issues" which require EPA to consider CARB's within-the-scope request under the criteria for a full waiver of federal preemption. EPA finds that the party opposing the within-the-scope confirmation has not met its burden of proof that the ZEV amendments raise new issues and therefore I cannot find that the within-the-scope confirmation should be denied on this basis.

Therefore I confirm that CARB's ZEV amendments as they affect the 2006 and earlier MYs, as noted above, are within-the-scope of existing waivers of federal preemption. I also find that the ZEV amendments as they affect the 2006 and earlier MYs meet the criteria for a full waiver and thus I alternatively grant a waiver of federal preemption for these MYs. I also grant a waiver of federal preemption of CARB's ZEV amendments as they affect the 2007 through 2011 MYs. As explained further in the Decision Document, EPA is not making any determinations regarding a

waiver of federal preemption applicable to 2012 and later MYs.

CARB did not seek a within-the-scope confirmation of the 2007 MY as part of its initial request to EPA. However, CARB later requested EPA to consider the 2007 MY provisions (with the exception of the LDT2 requirement) as within-the-scope. While EPA did request comment regarding CARB's within-the-scope request for the 2003–2006 MYs, EPA has not done so for the 2007 MY. As explained in the Decision Document, EPA does not believe that a further official request for comment is needed at this time. Because the 2007 MY provisions are very similar to the 2005–2006 MY provisions, I confirm that the 2007 MY requirements (with the exception of the LDT2 requirement) are within-the-scope of previous waivers of federal preemption. However, any party that wishes to object to this determination may file such objection as indicated in the DATES and ADDRESSES section above. Upon receipt of a timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** Notice.

A full explanation of EPA's decision, including our review of comments received in opposition to CARB's request, is contained in a Decision Document which may be obtained as explained 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 nonroad engines and 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. 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 under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: December 21, 2006.

**William L. Wehrum,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. E6–22314 Filed 12–27–06; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA–HQ–OAR–2006–0340; FRL–8262–6]**

### **Boutique Fuels List under Section 1541(b) of the Energy Policy Act**

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

**ACTION:** Notice.

**SUMMARY:** The Energy Policy Act of 2005 (EPAAct) includes a number of provisions addressing state boutique fuel programs. Section 1541(b) of this Act requires EPA, in consultation with the Department of Energy, to determine the total number of fuels approved into all state implementation plans (SIPs) as of September 1, 2004, under section 211(c)(4)(C) of the Clean Air Act (CAA). The EPAAct also requires us to publish a list of such fuels, including the states and Petroleum Administration for Defense District (PADD) in which they are used, for public review and comment. On June 6, 2006, we published a draft list based upon a "fuel type approach" along with an explanation of our rationale in developing it. We also published an alternative list based upon a "state specific approach." In this notice we are finalizing the list of total number of fuels approved into all SIPs as of September 1, 2004, based upon the fuel type approach. This notice also addresses comments that we received on the proposed draft notice and list.

**FOR FURTHER INFORMATION CONTACT:** Anne Pastorkovich, Environmental Protection Agency, MC 6406J, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–343–9623; fax number: 202–343–2801; email address: *pastorkovich.anne-marie@epa.gov*.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Under the Clean Air Act (CAA), state fuel programs respecting a fuel characteristic or component that we have regulated under section 211(c) (1) are preempted.<sup>1</sup> EPA may waive preemption through approval of the fuel program into a State Implementation Plan (SIP). Approval into the SIP

<sup>1</sup> See CAA section 211(c)(4)(A), 42 U.S.C. 7545(c)(4)(A).