

SUPPLEMENTAL BASIS STATEMENT
CHAPTER 127
NEW MOTOR VEHICLE EMISSION STANDARDS
April 16, 2009

List of Commenters:

A joint letter from the Large Volume Manufacturers (LVM):

Chrysler
Ford
General Motors
Honda
Nissan
Toyota

Mitsubishi Motors of America, Inc.
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1. Comment: The proposed California Air Resources Board (CARB) changes presented in October 2008 have not received the Office of Administrative Law (OAL) approval in California. Therefore, it seems premature for Maine DEP to consider updating their ZEV Mandate regulations. (Mitsubishi), (Large Volume Manufacturers)

Response: The Zero Emission Vehicle (ZEV) amendments to the California Low Emission Vehicle program were adopted by CARB on December 17, 2008. CARB filed the ZEV Final Rulemaking Package with the Office of Administrative Law on February 2, 2009. The ZEV amendments were approved by the Office of Administrative Law on March 18, 2009 and will take effect on April 17, 2009.

2. Comment: According to California's new regulation, Environmental Performance Labels are required on 2009 model year vehicles produced and offered for sale after January 1, 2009. It also states that for 2009 model year vehicles produced and offered before January 1, 2009, manufacturers may continue to use the Smog Index Label. This should be the same in all states requiring California certified vehicles. Based on this information, MEDEP will need to modify their proposed amendment to align with California's language and timing. (Mitsubishi)

Comment: The environmental performance label is required for all 2009 model-year California light-duty and medium-duty passenger vehicles manufactured on or after

January 1, 2009 and the label replaces the smog index label. In addition, California regulations allow for vehicles manufactured prior to January 1, 2009 to affix the environmental performance label in lieu of the smog index label. Therefore, many model-year 2009 vehicles will be equipped with the new label and the Maine regulations should allow manufacturers to place the environmental performance label instead of the smog index label on 2009 and subsequent model year vehicles. The manufacturers request the language be added “Manufacturers are allowed to utilize the environmental performance label in lieu of the smog index label for the model-year 2009.” (Large Volume Manufacturers)

***Response:** The Department’s proposed rule states that all California –certified vehicles and engines comply with the emission control label requirements, the smog index label requirements for 2002 through 2009 model-years, and the environmental performance label requirements for 2010 and subsequent model-years, in accordance with Title 13, California Code of Regulations Section 1965. The 2009 model year vehicles are already in production and offered for sale in Maine. Maine does not intend to retroactively enforce this requirement. However, recognizing that the auto manufacturers are meeting the California requirements; the language suggested will be added to Chapter 127.*

3. Comment: The exclusion of the Maine multiplier for Type III ZEVs was originally implemented because the credits earned from a Type III ZEV were broadly expected to originate in California and “travel” to Maine under the travel provisions. California has added additional ZEV types to the travel provision, specifically Types I, I.5 and II for the 2009 - 2014 model years and types IV and V for the 2009 – 2017 model years, and is also extending Type III through the 2017 model year. Also beginning with 2010 model year vehicles that qualify for the travel provision, will receive proportional credit rather than full credit in Section 177 States.

To update Maine’s regulations, the LVM suggest that all vehicles which travel under the revised California regulations be excluded from receiving the Maine multiplier. The LVM suggest the following revisions: “After the credit value for a 2005 through 2008 model year vehicle is established by CARB pursuant to California Code of Regulations, Title 13, Section 1962, or a credit value for a 2009 and subsequent model year vehicle is established by CARB pursuant to California Code of Regulations, Title 13, Section 1962.1, a Maine multiplier will be applied to such credit value for that vehicle in accordance with Table 1. The Maine multiplier shall not be applied to ~~Type III ZEVs placed in service pursuant to the California Requirements for Large Volume Manufacturers as identified in the California Code of Regulations, Title 13, Section 1962(b)(2) or Section 1962.1(b)(2)~~ all ZEVs that qualify for the travel provision under California Code of Regulations, Title 13, sections 1962(d)(5)(D) or 1962.1(d)(5)(E).” (Large Volume Manufacturers)

***Response:** A Maine multiplier is provided for 2004 through 2008 model year vehicles offered for sale in Maine in order for the LVM to bank credits. In 2009 the*

Maine multiplier no longer applies and all ZEV Type vehicles receive full credit when placed in Maine. In 2010 and subsequent model years ZEV Type vehicles receive full credit in California and proportional credit in Maine. The rule has been amended to clarify these revisions.

4. Comment: Type III ZEVs were the only ZEV type that qualified for the travel provision under California’s previous ZEV regulations. Under the new ZEV regulations, additional ZEV types qualify for the travel provision. Further, the travel provision provides for qualifying ZEV types that are placed in service in California or in a Section 177 State to be counted towards compliance in California and in all Section 177 States, either at full value for 2009 and earlier model year vehicles, or at proportional value for 2010 and later model year vehicles.

The LVM suggest the following revision: “A manufacturer shall be entitled to full the defined credits for each Type III ZEV placed in service prior to model year 2012 in any state that has adopted the California ZEV mandate all ZEVs as specified in the travel provision under the California Code of Regulations, Title 13, sections 1962(d)(5)(D) or 1962.1(d)(5)(E).” (Large Volume Manufacturers)

Response: *The ZEV amendments approved by CARB introduced new ZEV categories that are not required to be placed in service or offered for sale in all Section 177 States. ZEV vehicles placed in California or a Section 177 State count towards compliance at full value in 2009 and at a proportional value for 2010 and subsequent model years. Starting with 2010 and subsequent model years, qualifying ZEV Types placed in service in California or any Section 177 State may be counted towards compliance in California and in all Section 177 States provided that the credits are multiplied by the ratio of a LVM’s production volume in a Section 177 State for the same model year in California. The rule has been amended to clarify the travel provision revisions.*

5. Comment: With respect to the exclusion of certain ZEV types from the offer for sale requirements, Type III ZEVs were the only ZEV type that qualified for the travel provision under California’s previous ZEV regulations. Under the new ZEV regulations, additional ZEV types qualify for the travel provision and these additional ZEV types should likewise be excluded from the offer for sale requirements.

The travel provision provides for qualifying ZEV types that are placed in service in California or in a section 177 state to be counted towards compliance in California and in all section 177 states, either at full value for 2009 and earlier model year vehicles, or at proportional value for 2010 and later model year vehicles. In other words, the idea behind the travel provision is that qualifying ZEV types should not be required to be placed in service or offered for sale in all ZEV states, and that a manufacturer can place the vehicles in just a few or even one ZEV state to achieve compliance in all ZEV states. California has determined that the travel provision is appropriate for certain ZEV types over certain time periods because of the status of technology for the ZEV type and the status of the required infrastructure.

Therefore, Maine should exclude from the offer for sale all ZEV types that qualify for travel under the California revisions and suggest the following revision: “Starting with model year 2007, each manufacturer shall make available for purchase or lease in Maine any PZEV, AT-PZEV, Enhanced AT-PZEV and ZEV models, except all ZEVs that qualify for the travel provision under the Type III ZEVs placed in service pursuant to California Code of Regulations, Title 13, Section 1962(b)(2) or sections 1962(d)(5)(D) or 1962.1(d)(5)(E). Section 1962.1(b)(2), sold or leased in California.”

Starting with model year 2009, make available for purchase or lease in Maine any PZEV, AT-PZEV, Enhanced ATPZEV, and ZEV models, including all ZEVs except Type III ZEVs placed in service pursuant to California Code of Regulations, Title 13, Section 1962.1(b)(2), that are sold, leased or offered for sale in California except all ZEVs that qualify for the travel provision under the California Code of Regulations, Title 13, section 1962.1(d)(5)(E).” (Large Volume Manufacturers)

Response: *California has determined that the travel provision is appropriate for certain ZEV types over certain time periods because of the status of technology for the ZEV type and the status of the required infrastructure. Therefore, the rule has been amended to exclude from the offer for sale all ZEV types that qualify for travel under the California revisions.*

It has been determined that the ZEV Types 1-5 are not currently commercially available and would not be sent to Maine regardless. The auto manufacturers are exempt from sending ZEV Types I, 1.5, or II through model year 2014. However, Maine will continue to receive hybrid vehicles and will receive the enhanced AT PZEVs which include plug-in hybrids.

Maine’s ZEV program became effective with model year 2009, therefore we have omitted the paragraph requiring ZEV vehicles starting with model year 2007.

6. Comment: The LVMs request that Maine specify a clear end date for the offer for sale requirements. Subsections 4.D(1)(d) and 4.D(2)(c) provide start dates of MY2007 and MY2009 respectively, but offer no certain end date. The offer for sale requirements are part of the alternative compliance mechanisms and these are a transitional feature of Maine’s program to address the fact that Maine adopted the California program midstream.

The LVMs request that Maine modify its regulations to clearly specify that the offer for sale requirements apply through the 2011 model year. This would be in line with other states that adopted California standards in the same timeframe. For example, Rhode Island adopted California requirements starting with the 2008 model year and New Jersey adopted California standards starting January 1, 2009, and both of these states clearly specify that their offer for sale requirements apply through the 2011 model year. In both subsections this could be accomplished by adding the phrase “through the 2011 model year”. (Large Volume Manufacturers)

Response: *California's alternative compliance requirements end with model year 2011. Therefore, the Maine DEP accepts this revision.*

7. Comment: The LVMs request that Maine modify the regulatory language to provide the Commissioner with discretion regarding the implementation of the offer for sale requirements. There may be good reasons that an advanced technology vehicle model is offered for sale in California before it is offered for sale in Maine, such as limited volume upon initial introduction, the status of the technology, the status of the refueling infrastructure, the colder Maine climate, and/or the support needed such as special tools, equipment and training necessary for servicing the vehicles.

One example would be the introduction of a hydrogen powered ICE which would qualify as an Enhanced AT-PZEV. Others may include a limited pilot production volume of an early plug-in HEV (Enhanced AT-PZEV).

The LVMs request that Maine add the following phrase to the end of Subsections 4.D(1)(d) and 4.D(2)(c), "Further exclusions from the offer for sale will be allowed provided the manufacturer can demonstrate to the Commissioner's satisfaction that an alternative approach would better facilitate the successful launch of the advanced technology model that is being introduced". Such a provision would be similar to the discretion provided in Section 6. Recall. Section 6 allows the Commissioner to review California voluntary or influenced emission related recalls for applicability to Maine. (Large Volume Manufacturers)

Response: *The Department does not believe that such a provision is necessary. California's travel provisions exempt ZEV Types 1, 1.5, or II vehicles from being placed in Section 177 States through model year 2014, and exempt ZEV Types II, IV or V vehicles from the offer for sale requirements until 2017. The Department believes that these provisions will provide ample time for manufacturers to increase volume production and make any necessary technological improvements.*

It should also be pointed out that since Chapter 127 is included in the Maine State Implementation Plan, unlike the Section 6 recall provisions referenced by the commenter, any provisions providing the Commissioner with the discretionary authority to allow further exclusions from the offer for sale provisions would also require review and approval by EPA.

8. Comment: The State of Maine has voluntarily adopted the California Low Emission Vehicle (LEV) Standards. In accordance with Section 177 of the Clean Air Act, Maine must amend its Chapter 127 regulation due to the recent changes to California's LEV program. Since the Maine LEV program is in the Maine State Implementation Plan (SIP), Maine should continually update what is in its SIP, as EPA grants waivers or determines California's revisions are within the scope of previous waivers of federal preemption decision for LEV program standards.

Our review of Maine's proposal indicates that the proposed revisions are consistent with updates that California has made to the California LEV program, thus we have no further comments at this time. (U.S. EPA)

Response: *The Department agrees and intends to submit to EPA the revisions to the LEV program to the State Implementation Plan.*