

Relationship to Federal Requirements

RULE CAPTION

Oregon Low Emission Vehicle (LEV) Rules

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

- 1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?**

Yes. Under the federal Clean Air Act (CAA), the state of California can adopt its own motor vehicle emission standards as long as they are at least as stringent as the federal requirements. Section 209 of the CAA prohibits all other states from establishing their own vehicle emission standards. However, Section 177 of the CAA allows eligible states (those with a federally-approved air quality plan) to opt in to California's standards. Section 177 further requires that "opt-in" states adopt California's standards identically and in a manner that does not require manufacturers to build a "third car." Manufacturers currently design one type of vehicle to meet California standards and another type of vehicle to meet federal standards. Therefore, a state adopting California's standards must not alter California's regulations such that manufacturers would be required to make a third type of vehicle.

Under the Energy Policy and Conservation Act of 1976, Congress established Corporate Average Fuel Economy (CAFE) regulations to reduce fuel consumption. The Alliance of Automobile Manufacturers claims that California's greenhouse gas (GHG) emission limits are preempted by the CAFE standards even though they are permissible under the Clean Air Act. Litigation on this issue is scheduled for trial in 2007, and the outcome is certain to be taken to the U.S. Ninth Circuit Court of Appeals. If the challenge is ultimately successful, California will have to revise its program to be consistent with the court ruling. In that case, Oregon would still benefit from reduced emissions of ozone precursors and air toxics, as well as any new approaches California utilizes to reduce GHG emissions.

Any state opting in to California vehicle standards must adopt requirements virtually identical to California's. However, opt-in states have flexibility in the way they implement the standards, and many opt-in states have customized aspects of the California program in order to design a program that best serves their needs. The legality of such customization is less than clear. EPA indicates it believes customizing implementation is permissible, so long as

variations from California standards do not trigger the need for a “third car” to meet the state standard. In most respects, DEQ’s proposed rules adopt California standards identically. However, DEQ’s proposal does include select Oregon customizations. DEQ believes that Oregon’s proposed variation from California’s requirements would not require the manufacture of a “third vehicle,” and thus would be permissible.

Customizations made by other opt-in states remain untested in court. If an opt-in state’s customizations were ever disallowed under the Clean Air Act, the remedy would simply be to align the state’s program fully with California rules or opt out of the California program and return to the federal standards.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

Both the federal and California vehicle emission standards are performance based. Auto manufacturers have considerable flexibility to meet specified emission limits.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

No. The current federal “Tier 2” vehicle emission standards do not address the reduction of greenhouse gases that lead to global warming. In 2004, the Governor’s Advisory Group on Global Warming determined that Oregon will experience serious consequences from global warming if no action is taken. Motor vehicles represent one of the largest sources of greenhouse gas emissions in Oregon. The Governor’s Advisory Group recommended adopting California’s new vehicle emission standards as a key strategy for reducing Oregon’s fair share of greenhouse gases.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

No.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There is no indication that federal standards will be amended in the future to address greenhouse gas reduction. Currently, the only way to achieve greenhouse gas reductions from automobiles is by adopting California’s vehicle emission standards.

6. Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

Adopting California's vehicle emission standards will significantly decrease Oregon's global warming emissions as well as air pollutants that contribute to ground level ozone (smog) and air toxics. Further reduction of these air emissions will improve air quality, better protect public health, and help accommodate future growth in Oregon.

7. Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

Yes. Adopting the Low Emission Vehicle standards in Oregon will mean that the same requirements will apply to the entire west coast (Washington, Oregon, and California)

8. Would others face increased costs if a more stringent rule is not enacted?

No.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

Yes. The proposed rule contains reporting requirements for auto manufacturers that are different from federal requirements. The Low Emission Vehicle rules set emission standards that are different from federal standards. Therefore, different reporting methods are needed. The rule also contains a new reporting requirements for auto dealers.

10. Is demonstrated technology available to comply with the proposed requirement?

Yes. The Low Emission Vehicle requirements were developed to allow the use of existing and emerging technologies. To meet the tighter restrictions for ozone precursors (NMOG and NOx), automakers are expected to use the same techniques that are applied to meet the federal emission standards, but to use those techniques more intensively. Those techniques include more accurate engine control systems and higher capacity catalytic converters.

To meet the Greenhouse Gas (GHG) emission reductions, manufacturers are expected to use existing technologies such as turbo charging, cylinder deactivation, variable valve lift and timing, low-leak air conditioning, continuously variable transmissions, and direct fuel injection. The GHG requirements may also stimulate the use of emerging technologies such as electric power steering and camless engine systems.

The Zero Emission Vehicle (ZEV) portion of the Low Emission Vehicle standards can be fully met by using existing technology such as battery-electric vehicles. However, the ZEV requirements are intended to be technology-forcing in the sense that they promote the development and use of no-emission technologies. That is done by allowing alternative methods of compliance that recognize and reward the use of alternative fuels, hybrid vehicles, hydrogen-combustion engines, and hydrogen fuel cell vehicles.

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The Governor's Advisory Group on Global Warming recommended adopting California vehicle emission standards as one of the most cost effective strategies to help reduce Oregon's greenhouse gases. In addition to reducing greenhouse gases, the proposed standards will also reduce smog-forming emissions and hazardous air pollutants from motor vehicles. Compliance with the Low Emission Vehicle requirements is expected to better protect public health and produce a net savings to vehicle owners through improved fuel economy.