UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

---oOo---

19290

PUBLIC HEARING

on

CALIFORNIA WAIVER REQUEST

May 16 - May 20, 1977

Conference Rooms A-B-C
EPA Region IX Office
San Francisco, California

VOLUME I

Pages 1 - 212

May 16, 1977

Reported by:

THOMAS R. WILSON

1
2
HEARING PANEL
3
4
BENJAMIN R. JACKSON - Presiding Officer
5 Director, Mobile Source Enforcement Division
U. S. Environmental Protection Agency
6 Washington, D. C.
7
CHARLES GRAY
8 Chief, Standards Development and Support Branch
U. S. Environmental Protection Agency
9 Washington, D. C.
10
11
EPA STAFF
12
13
DANIEL M. STEINWAY
Attorney-Advisor
14 U. S. Environmental Protection Agency
Washington, D. C.
15
16
JAMES MC NAB, III
Attorney-Advisor
17 U. S. Environmental Protection Agency
Washington, D. C.
18
19
MARILYN J. HERMAN
Program Analyst
20 U. S. Environmental Protection Agency
Washington, D. C.
21
22
23
---o0o---
24
25
26
27
28

I N D E X

	Page
CALIFORNIA AIR RESOURCES BOARD	15
THOMAS AUSTIN Deputy Executive Officer, Technical	
KINGSLEY MACOMBER Chief Counsel	
DONALD DRACHAND Chief, Engineering Branch	
GARY RUBENSTEIN Manager, Special Projects Section	
GENERAL MOTORS CORPORATION	35
EDWIN E. NELSON Assistant Director of Automotive Emission Control	
RICHARD I. PETERSEN Attorney	
HAROLD W. SCHWOCHERT Staff Engineer, Automotive Emission Control	
FORD MOTOR COMPANY	56
DONALD R. BUIST Executive Engineer for Certification Engineering and Testing Laboratory	
HELEN PETRAUSKAS Attorney	
CALIFORNIA AIR RESOURCES BOARD	70
THOMAS AUSTIN Deputy Executive Officer, Technical	
KINGSLEY MACOMBER Chief Counsel	
DONALD DRACHAND Chief, Engineering Branch	
GARY RUBENSTEIN Manager, Special Projects Section	

I N D E X (Cont'd) Page

HARLEY-DAVIDSON 88

JOSEPH R. AUSTIN
Attorney with Tuttle and Taylor
Los Angeles, California

LAIMONIS T. EMBREKTS
Director, Environmental Control and
Energy Resources Planning for AMF, Inc.

YAMAHA 130

RUSSELL JURA
Technical Staff Counsel

KAWASAKI 155

DENNIS DAVID
Manager of Legislative Section

DARRELL R. JOHNSON
Attorney with Paul, Hastings & Janofsky
Los Angeles, California

SUZUKI 198

JOHN WALSH
Supervisor, Ground Level Research
Safety and Legislation

---o0o---

1 CHAIRMAN JACKSON: Good morning.

2 This is the United States Environmental Protection
3 Agency public hearing to consider a number of requests by the
4 State of California for a waiver of federal preemption under
5 Section 209(b) of the Clean Air Act for a series of past
6 actions taken by the California Air Resources Board.

7 I am Ben Jackson, Director of the Mobile Source
8 Enforcement Division of the Environmental Protection Agency. I
9 have been designated as Presiding Officer for the hearing.

10 My colleagues who will assist me at various times in
11 conducting the hearing are Mr. Charles Gray, Mr. Karl Hellman
12 and Mr. Mick Leiferman of the Office of Mobile Source Air
13 Pollution Control.

14 On Thursday, Dr. Norman Shutler, Deputy Assistant
15 Administrator for Mobile Source and Noise Enforcement, and
16 Mr. Eric Stork, Deputy Assistant Administrator for Mobile
17 Source Pollution Control, will join the Panel.

18 The Panel will also be assisted by Mr. Daniel
19 Steinway and Mr. James McNab III, who are attorney-advisors
20 with the Mobile Source Enforcement Division, and Ms. Marilyn
21 Herman, who is responsible for maintaining the record and
22 scheduling witnesses.

23 The CARB has submitted the requests under considera-
24 tion to the Administrator of the Environmental Protection
25 Agency in order to permit the State of California to enforce
26 the following provisions of its motor vehicle emission control
27 program:

28 (1) Compliance and inspection testing of 1977 and

1 subsequent model year vehicles except 1977 and 1978 model
2 year gasoline-powered passenger cars and light-duty trucks
3 under Title 13 of the California Administrative Code,
4 (2) The exhaust emission standards and test pro-
5 cedures for 1979 and subsequent model year passenger cars,
6 light duty trucks, and medium duty vehicles, including certi-
7 fication procedures applicable to these classes of vehicles
8 for 1980 and subsequent models imposing a restriction on
9 allowable maintenance,
10 (3) The November 23, 1976, amendments to the
11 California evaporative emission regulations for 1978 and
12 subsequent model year gasoline-powered motor vehicles except
13 motorcycles, and also, evaporative emission standard and test
14 procedures (SHED test) applicable to these classes of vehicles
15 for 1980 and subsequent model years, and
16 (4) Assembly-line testing of 1978 model year diesel-
17 powered light duty trucks and medium duty vehicles. During
18 this hearing the EPA will also consider whether California
19 continues to comply with the conditions of the October 1, 1976,
20 motorcycle waiver and whether California should be granted a
21 general waiver of Federal preemption for all standards and test
22 procedures (including accompanying enforcement procedures)
23 adopted by the CARB in the future relating to the control of
24 emissions from new motor vehicles or new motor vehicle engines.
25 Some further clarification of the items under con-
26 sideration at this hearing should also be made at this time.
27 First, with respect to California's compliance and inspection
28 testing procedures, EPA has been advised by the CARB that it

1 intends to modify these procedures for evaluating motorcycles
2 tested under this program at a later date. As a result, EPA
3 has decided to postpone consideration of this item as it
4 applies to motorcycles until such time as California has
5 adopted these modifications.
6 Secondly, in connection with the reconsideration of
7 the October 1, 1976, waiver, EPA will also consider the
8 question of granting California a waiver for the March 24,
9 1977, amendments to the California motorcycle regulations
10 effecting changes in the 1982 standards and test procedures.
11 EPA will also accept testimony during this hearing
12 on the provision of the March 24 amendments requiring the
13 submission of a completed copy of an application for certifi-
14 cation and a certificate of conformity to the Executive
15 Officer of the CARB. However, EPA will not consider any
16 testimony concerning those March 24 amendments which affect
17 the 1978-1981 standards and test procedures, since the
18 manufacturer's views on these amendments have already been
19 adequately presented in the context of the Federal regula-
20 tions.
21 Finally, by letter dated April 25, 1977, the CARB
22 has requested that EPA consider granting California a waiver
23 for a 0.39 grams per mile non-methane hydrocarbon exhaust
24 emission standard applicable to 1980 and subsequent model
25 year passenger cars, light duty trucks and medium duty
26 vehicles under 4000 pounds inertia weight in place of the
27 standard which had originally been adopted on November 23,
28 1976, for these classes of vehicles.

We have decided to grant CARB's request, and we will accept comments on this matter both during the hearing and for three weeks thereafter during which the record will remain open.

For the record, the hearing is convened in the Conference Room on the second floor of the Regional Office of the United States Environmental Protection Agency, 100 California Street, San Francisco, California.

To complete the opening of the record and at the same time to expedite the proceedings, I would like to insert into the record as if read, the following documents:

The following is a list of 16 documents, which I will give to the reporter so he can insert them in the record, but I will not read them at this time. A copy of this statement is available for anyone who would care to have it for their own record, the documents that I am referring to.

---oOo---

(1) The letters of July 19, 1976, January 20, 1977, and February 22, 1977, from Mr. William H. Lewis, Jr., Executive Officer of the CARB, to Mr. Russell Train, the former Administrator of EPA, and Mr. Douglas Costle, the present Administrator of the EPA, notifying Mr. Train and Mr. Costle that California had taken a series of actions to revise its motor vehicle emission control program and requesting a waiver of Federal preemption for those actions which in the Administrator's judgment required such a waiver;

(2) The letters of November 1, 1976, and February 14, 1977, from Mr. Lewis to Mr. Train and Mr. Costle, informing

1 Mr. Train and Mr. Costle of the CARB's intentions to modify
2 the California vehicle emissions control program with respect
3 to motorcycles in light of the promulgation of emission
4 standards and test procedures by EPA for 1978 and subsequent
5 model year motorcycles;
6 (3) A letter of February 16, 1977, from EPA to CARB,
7 soliciting the views of CARB on the question of granting
8 California a general waiver of Federal preemption;
9 (4) The letters of April 8, 1977, and May 4, 1977,
10 from EPA to CARB, stating that a hearing would be convened to
11 address California's waiver requests in addition to the
12 questions of whether California should be granted a general
13 waiver and whether the October 1, 1976, waiver should remain in
14 effect;
15 (5) A letter of April 15, 1977, from Mr. Lewis to
16 Mr. Costle notifying Mr. Costle that the CARB had amended the
17 California vehicle emissions control program with respect to
18 motorcycles;
19 (6) A letter of April 25, 1977, from CARB to EPA,
20 requesting that EPA consider at this hearing a 0.39 grams/mile
21 non-methane hydrocarbon standard applicable to 1980 and
22 subsequent model year passenger cars, light duty trucks, and
23 medium duty vehicles under 4000 pounds inertia weight;
24 (7) A May 2, 1977, mailgram from CARB to EPA,
25 requesting that EPA not consider the item of compliance and
26 inspection testing of motorcycles during this hearing;
27 (8) The April 13, 1977, Federal Register notice of
28 this hearing, and the April 20, 1977, Federal Register notice

1 correcting the Table of Contents in the issue of the Federal
2 Register which included the announcement of the public hearing;
3 and
4 (9) The October 1, 1976, motorcycle waiver decision.
5 See 41 FR 44209 (October 7, 1976).
6 In addition, the following will be made a part of
7 the record:
8 (1) Sections 2100 et seq., Title 13, California
9 Administrative Code,
10 (2) Sections 1955.1, 1955.5, 1959, Title 13,
11 California Administrative Code, and "California Exhaust
12 Emission Standards and Test Procedures for 1975 through 1979
13 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty
14 Vehicles," adopted February 19, 1975, last amended November
15 23, 1976,
16 (3) Section 1960, Title 13, California Administra-
17 tive Code, and "California Exhaust Emissions Standards and
18 Test Procedures for 1980 and Subsequent Model Passenger Cars,
19 Light-Duty Trucks, and Medium-Duty Vehicles," adopted
20 November 23, 1976, as amended December 14, 1976,
21 (4) Section 1976(b), Title 13, California
22 Administrative Code, and "California Evaporative Emission
23 Standards and Test Procedures for 1978 and Subsequent Model
24 Gasoline-Powered Motor Vehicles except Motorcyles," adopted
25 April 16, 1975, last amended November 23, 1976,
26 (5) Section 2056, Title 13, California Administra-
27 tive Code, and "California Assembly-Line Test Procedures for
28 1978 Model-Year Passenger Cars, Light-Duty Trucks and

1 Medium-Duty Vehicles," adopted January 25, 1977, and
2 (6) Section 1958, Title 13, California Administra-
3 tive Code, and "California Exhaust Emission Standards and Test
4 Procedures for 1978 and Subsequent Production Motorcycles,"
5 adopted July 15, 1975, as amended February 20, 1976, March 24,
6 1977, and
7 (7) 40 C.F.R. 86.401-78 et seq. (1977).
8 Furthermore, in considering whether to grant
9 California a general waiver from the prohibitions of Section
10 209(a), the pertinent California standards and test procedures
11 can be found in Title 13 of the California Administrative
12 Code.
13 ---oOo---
14 CHAIRMAN JACKSON: To assure that all parties are
15 aware of the substance of the correspondence mentioned
16 earlier, I will briefly review the issues that were addressed
17 in those letters.
18 In CARB's letters of July 19, 1976, January 20, 1977,
19 and February 22, 1977, CARB informed EPA that it had taken
20 a series of actions to revise its motor vehicle emission
21 control program, and requested a waiver for those actions
22 which EPA determined required a waiver. In EPA's letter of
23 April 8, 1977, CARB was informed that these actions required
24 a waiver before they could be effectuated by California.
25 This letter also informed CARB that a public hearing would be
26 convened to consider its requests for a waiver in connection
27 with those actions noted in the four CARB letters in addition
28 to the questions of whether to grant California a general

1 waiver and whether the October 1, 1976, waiver should remain
2 in effect.
3 In the CARB correspondence of November 1, 1976,
4 January 20, 1977, and February 14, 1977, the CARB informed EPA
5 of its intentions to modify the California vehicle emissions
6 control program with respect to motorcycles. Following this
7 correspondence, the CARB notified EPA in an April 15, 1977,
8 letter that the CARB had adopted certain amendments to the
9 California motorcycle regulations. In this letter the CARB
10 also stated that it intended to enforce its compliance and
11 inspection testing program with respect to motorcycles
12 beginning in 1978, but on May 2, 1977, the CARB requested
13 that EPA postpone consideration of this item until a later
14 date.
15 This hearing is intended to provide an opportunity
16 for interested persons to state their views or arguments, and
17 provide pertinent information relating to the determination
18 to be made by the Administrator with respect to these waiver
19 requests, the general waiver question, and the reconsideration
20 of the October 1, 1976, waiver. However, the determination of
21 the Administrator regarding the action to be taken with
22 respect to the subjects under consideration is not required
23 to be made solely on the record of the public hearing.
24 Since the notice was inserted into the record and
25 not read, I will now summarize the procedures and ground rules
26 for the hearing.
27 The hearing is being held pursuant to Section 209(b)
28 of the Federal Clean Air Act. It will be conducted in

1 accordance with the rules which have been in effect at prior
2 hearings on California waiver applications. The agenda for the
3 hearing has been previously outlined in the Federal Register
4 notice announcing this hearing.
5 Generally the procedures will be informal. Formal
6 rules of evidence will not be in effect. The Presiding Officer
7 is authorized, however, to strike from the record statements
8 which he deems irrelevant or needlessly repetitious, and to
9 impose reasonable limits on the duration of the statement
10 of any witness. No cross-examination will be permitted.
11 However, to the extent that time allows, the Presiding Officer
12 may permit brief questions of clarification from any partici-
13 pant to any other participant. Questions of a more explora-
14 tory nature may be submitted in writing to the Presiding
15 Officer through Ms. Herman, and such questions at the discre-
16 tion of the Presiding Officer may be posed to any witness
17 by a member of the panel.
18 A verbatim record of the hearing is being made, and
19 the transcript will constitute the sole official record of
20 this hearing. A copy of the record will be on file for public
21 inspection by any interested persons at the EPA Public
22 Information Reference Unit, Room 2922, in Washington, D.C.,
23 and at the regional office in San Francisco and the District
24 office in Los Angeles. Persons desiring copies of the
25 transcript should make arrangements with the reporter.
26 I would like to make one more comment in an attempt
27 to focus on the issues we will be concerned with today and for
28 the rest of the week.

1 Section 209(b) of the Clean Air Act requires the
2 Administrator to waive Federal preemption of California
3 standards for new motor vehicle emissions unless he makes
4 certain findings. Findings which would cause a denial of the
5 waiver include a finding that California does not require more
6 stringent standards to meet compelling and extraordinary
7 conditions of air pollution in California, or that the
8 standards are not more stringent than Federal standards, or
9 that the California standards and accompanying enforcement
10 procedures are inconsistent with Section 202(a) of the Clean
11 Air Act.
12 With regard to whether California requires more
13 stringent standards to meet compelling and extraordinary con-
14 ditions of air pollution, that issue has not generally been
15 considered to be a close one in the past. On the relative
16 stringency issue, if the California standards and procedures
17 may result in some further reduction in air pollution in
18 California above and beyond that which can be achieved under
19 the Federal control program, then the relative stringency
20 test is met.
21 With regard to inconsistency with Section 202(a), the
22 issue of inconsistency relates to whether the Federal and
23 California test procedures are inconsistent, and whether the
24 California standards and enforcement procedures take effect
25 after such a period as the Administrator finds necessary to
26 permit the development and application of the requisite
27 technology, giving appropriate consideration to the cost of
28 complying within the period. Loosely put, this issue focuses

on whether the industry is faced with different methods of obtaining certification, and whether adequate technology and lead time are available for meeting the prescribed standards. This issue has been the key one in the past.

With that, we can move on to the witnesses. We have an order of appearance for those who have indicated that they wished to appear. Copies of the agenda and witness list are available from Ms. Herman.

There may have been additions to or deletions from the agenda since it was printed. If it appears the order is going to cause any one or more of you a hardship, please contact Ms. Herman and she will relay this to me. We will attempt to accommodate any time problems anyone has. We would also appreciate it if all witnesses would confirm their positions on the schedule with Ms. Herman.

The record will remain open until Friday, June 10, 1977, for the submission of any further information by any interested persons.

The first witnesses of the day will be the representatives of the California Air Resources Board.

MR. TOM AUSTIN: Good morning.

My name is Tom Austin, and I am Deputy Executive Officer for the California Air Resources Board. With me today are Kingsley Macomber, the Board's Chief Counsel, Don Drachand and Gary Rubenstein from the Vehicle Emissions Control Division. We are here seeking a waiver from EPA of Section 209(a) of the Clean Air Act in order to allow California to implement more stringent emission standards and test

1 procedures for 1978 and subsequent model-year motorcycles,
2 passenger cars, light-duty trucks, and medium-duty vehicles.
3 In considering California's requests for waivers of
4 federal preemption, Section 209(b) of the Clean Air Act
5 allows the Administrator to consider all three issues:
6 1. Whether compelling and extraordinary conditions
7 continue to exist in California;
8 2. Whether California's standards and test pro-
9 cedures are more stringent than applicable Federal Standards;
10 and
11 3. Whether California's standards and test and
12 enforcement procedures are consistent with Section 202(a) of
13 the Clean Air Act, in particular with respect to their tech-
14 nological feasibility within the remaining lead time, con-
15 sidering the cost of compliance.
16 Since the first issue has been considered many times
17 at previous waiver hearings, my discussion of it will be brief.
18 I will then present our comments on each of the specific
19 waiver items according to the schedule contained in your
20 hearing notice.
21 On compelling and extraordinary conditions, the
22 compelling and extraordinary need for stringent emissions
23 controls which exists in California has never been disputed by
24 the Administrator in previous waiver decisions. California
25 currently violates Federal Ambient Air Quality Standards for
26 every criteria pollutant except SO_2 which is now at the
27 Federal standard and rising. Oxidant violations have recently
28 exceeded the Federal standard by over 400%. No other area

1 of the country, and possibly the world, has such severe
2 oxidant problems. No set of control programs short of a
3 virtual shut down of vehicle and stationary source activity
4 throughout the greater metropolitan Los Angeles area has ever
5 allowed EPA to project compliance with the National Ambient
6 Air Quality Standard for oxidant. Both hydrocarbon and oxides
7 of nitrogen emissions contribute to California's oxidant
8 problem. Given this situation, ARB believes it is prudent to
9 pursue all hydrocarbon and oxides of nitrogen control measures
10 which are technologically feasible and conomically practical.
11 Further control over motor vehicles consitutes one element of
12 ARB's program to eventually achieve and maintain the National
13 Ambient Air Quality Standard for oxidant.
14 If California's previously adopted standards were
15 maintained without change, we estimate that by 1990, motor-
16 cycle, passenger car, light-duty truck, and medium-duty
17 vehicle emissions would account for 432 tons/day, or 29%, of
18 the South Coast Air Basin NO_x inventory, and 358 tons/day, or
19 21%, of the hydrocarbon inventory, even though by that time,
20 almost all vehicles would meet those standards. We estimate
21 that the South Coast Air Basin would exceed the state's
22 ambient NO_2 standard by 170% in 1990 unless an additional
23 930 tons/day of NO_x control were achieved; the ambient oxidant
24 standard could still be exceeded by over 400% during stable
25 meteorological conditions unless an additional 1390 tons/day
26 of the hydrocarbon control were achieved.
27 While substantial reductions in emissions from
28 passenger cars, light-duty trucks, and medium-duty vehicles

have already been made, we believe that further reductions in the emissions levels of this ever-increasing vehicle population must be made as a significant part of our total effort to improve California's air quality.

To achieve further control over motor vehicle emissions, the Board has recently adopted or modified several standards and test procedures which we have asked to be considered at this hearing. These items are:

1. New vehicle inspection and compliance test procedures for 1978 and subsequent model-year motor vehicles and motor vehicle engines.

2. Assembly-line test procedures for 1978 model-year medium-duty vehicles and diesel-powered light-duty trucks.

3. Exhaust hydrocarbon emission test procedure changes for 1982 and subsequent model-year motorcycles.

4. An evaporative emission standard of 2.0 grams per test for 1980 and subsequent model-year motor vehicles except motorcycles.

5. More stringent hydrocarbon, carbon monoxide, and oxides of nitrogen emissions standards for 1979 and subsequent model-year passenger cars, light-duty trucks and medium-duty vehicles.

6. Idle air/fuel ratio adjustability regulations for 1980 and subsequent model-year vehicles.

With all of the above regulations, we estimate further South Coast Air Basin emission reductions in 1990 of approximately 160 tons/day of hydrocarbons, and 260 tons/day of oxides of nitrogen. These regulations alone bring us 12% and 28%

1 closer to our goals for hydrocarbon and NO_x respectively.
2 The 108 tons/day reduction in CO emissions should be the last
3 step required for new vehicles to allow us to achieve the
4 carbon monoxide Ambient Air Quality Standard if vehicles meet
5 the nine gram per mile standard in use.
6 Following I have some specific comments on the
7 individual items, the six individual items being considered
8 today.
9 I have one question for the Hearing Officer, and
10 that's as to whether he prefers me to only cover the inspection
11 and compliance test procedures portion of my statement at
12 this time, or would you prefer to hear our statement on both
13 inspection and compliance and assembly line tests at the same
14 time?
15 CHAIRMAN JACKSON: Both at the same time. I don't
16 think we will have any trouble keeping the record straight.
17 MR. AUSTIN: Okay. They are separate issues, but
18 we think they are somewhat related and maybe it will be
19 helpful.
20 On inspection and compliance test procedures, the
21 inspection and compliance test procedures for which we are
22 seeking a waiver differ from our previous procedures in two
23 significant ways.
24 First, the new procedures incorporate a modified
25 sampling and data analysis technique which is statistically
26 more valid. Under the new procedures, testing continues until
27 we are approximately 90% confident that the engine family
28 either passes or fails, or until 20-24 vehicles have been

1 tested. Our former procedures forced a decision after
2 triplicate tests on no more than five vehicles. Under the old
3 procedure it was possible for failing engine families to pass
4 because of inadequate confidence that the failure occurred.
5 The second change in the inspection and compliance
6 tests procedures is that the new procedures are restricted to
7 vehicles and pollutants subject to assembly-line testing.
8 The Federal Register notice of April 13, 1977,
9 indicated that California's inspection and compliance testing
10 requirements applicable to 1977 and 1978 model-year gasoline-
11 powered passenger cars and light-duty trucks are within the
12 scope of the waiver currently in effect for assembly-line
13 testing of such vehicles, based on the similarity of their
14 objectives and procedures. We concur with that finding.
15 As an extension of this finding, we ask that the
16 Administrator grant California a waiver for inspection and
17 compliance testing of any vehicles which in the future become
18 subject to assembly-line testing by California under a valid
19 waiver, provided the procedures are similar. For example,
20 the next item, California's waiver request for assembly-line
21 testing of 1978 model-year diesel-powered light-duty trucks,
22 and medium duty vehicles, would fall into this category.
23 We further ask that California be granted a waiver
24 for inspection testing, apart from its relationship to
25 assembly-line testing, for all vehicles, including motorcycles,
26 not covered by the April 13 announcement. Since there is
27 currently no equivalent federal program, we believe inspection
28 testing is more stringent. Nor can we identify any issues of

1 feasibility or lead time, since the program is essentially one
2 to enforce quality control procedures.
3 In our mailgram of May 2, 1977, ARB stated that we
4 believe it is premature to request a waiver at this hearing
5 for motorcycle inspection and compliance test procedures, since
6 the Board has not specifically addressed this matter. After
7 the June Board meeting, when the Board is scheduled to consider
8 and draft its recommendations on motorcycle compliance test
9 procedures, we will request a waiver for specific regulations.
10 On the issue of assembly-line test procedures for
11 1978 diesel-fueled light-duty trucks and gasoline and diesel
12 medium-duty vehicles, assembly-line test procedures have always
13 been an important enforcement tool for the ARB. The increasing
14 sales of medium-duty vehicles and diesel-powered light-duty
15 trucks have created a need for the extension of assembly-line
16 test procedures to these vehicles. There is no essential
17 difference between the assembly-line procedures we have adopted
18 for these vehicles and the current procedures applied to
19 gasoline-powered passenger cars and light-duty trucks. EPA has
20 recognized that ARB's assembly-line test requirements add a
21 degree of stringency both to the California certification
22 requirements, and to Federal certification requirements com-
23 bined with the Selective Enforcement Audit testing program.
24 It appears therefore that the only issue before EPA at this
25 hearing is whether adequate lead time was provided for ARB's
26 extension of assembly-line test requirements to the additional
27 vehicle categories.
28 For 1978, the new regulations require that the

1 medium-duty vehicle configurations selected for certification
2 testing be assembly-line tested for enforcement purposes.
3 Other vehicle configurations will be assembly-line tested for
4 information only. The data obtained from this second group
5 will not be used for enforcement of the standards. This
6 provision, which is applicable to medium-duty vehicles for
7 one year only, addresses the lead time problems brought to our
8 attention by the manufacturers.
9 There was consensus among the industry that these
10 procedures were feasible for the 1978 model-year, and conse-
11 quently we expect to hear little opposition on this issue
12 today.
13 As far as we know, only General Motors will be
14 manufacturing diesel vehicles subject to these assembly-line
15 test procedures in 1978. General Motors has verbally informed
16 ARB of potential instrumentation problems associated with
17 conducting the required idle test; however, they have not
18 notified us of this problem in writing. We expect to work
19 closely with GM to resolve any technical difficulties prior to
20 the start of 1978 production.
21 In conclusion, we believe that the assembly-line
22 test procedures for 1978 diesel-fueled light-duty trucks and
23 gasoline and diesel medium-duty vehicles are not materially
24 different from other California assembly-line test procedures,
25 and do not present any problems of either lead time or tech-
26 nological feasibility for the manufacturers. We believe that
27 EPA should grant California a waiver for these procedures,
28 since they are a necessary part of ARB's enforcement package.

I have just one other comment to make.

In recent conversations with some of the manufacturers, we have heard the argument expressed that there is an inconsistency between our assembly-line test procedures and the proposed inspection and compliance test procedures because of the fact that the inspection and compliance test procedures look at the performance of subgroups and not just the family, the entire family in toto. We don't think there is an inconsistency since the purpose of assembly-line testing is to verify that the vehicles being mass produced are, in fact, meeting the same standards which the certification prototypes met.

The certification program requires that each and every configuration meet the standard. Assembly-line testing is a method that we employ to check on the performance of the vehicles being mass produced. While we don't specifically look at subgroups during the assembly-line testing program, I believe we have that flexibility; and when we do find failures of an entire family through our assembly-line testing, we quite often allow corrections to be made to a subgroup only if it can be shown that a subgroup is causing the problem for the entire family.

Given that fact, I think it's appropriate for us to look at subgroups when we are doing our inspection and compliance procedures, and we fail to see any significant inconsistency in that area.

I don't have any further comments. I will be happy to answer any questions.

1 Mr. Drachand informs me that there is perhaps one
2 other point that's not entirely clear. We mentioned that for
3 assembly-line testing, it's our intention for 1978 only to
4 test the certified configurations of medium-duty vehicles.
5 We also intend to restrict our compliance testing, our Title
6 13 compliance testing, to the certified configurations of
7 medium-duty vehicles for the 1978 model year. Perhaps that
8 wasn't clear in the statement.
9 CHAIRMAN JACKSON: I assume all of them are going to
10 be certified.
11 MR. AUSTIN: What I am referring to are those
12 configurations that were actually subject to certification
13 testing. Recognizing that all configurations are supposed to
14 be covered by the certificate, in order to reduce the amount
15 of lead time associated with doing the compliance testing, for
16 doing the assembly-line testing for 1978, we agreed to restrict
17 the scope of the program to those specific configurations
18 which went through the certification process. Generally
19 these are the highest volume configurations but in order to
20 allow the manufacturers to avoid having to run specific
21 testing programs to verify the performance of each combination
22 of engine family, calibration, axle ratio, in order to avoid
23 that delay, we have for the 1978 model year only agreed to
24 conduct our enforcement testing on only those specific
25 configurations which actually went through certification and
26 testing.
27 They are all covered by the certificate, but for
28 '78 only, we intend to concentrate on the configurations which

1 actually went through the prototype testing phase.

2 CHAIRMAN JACKSON: That has a terrible inference,

3 does it, in that if it wasn't tested in certification, it may

4 not meet the standards?

5 MR. AUSTIN: Yes, it does. That's why we have made

6 it very clear that it's going to be a one-year program only,

7 and in 1979, we revert to doing a random sampling of all

8 configurations.

9 CHAIRMAN JACKSON: Is it a volume issue of the

10 amount of testing that would have to be done, or is it just

11 the concern that these configurations might not meet the

12 standards?

13 MR. AUSTIN: No, it wasn't a volume issue. I think

14 it was Ford that made most of the arguments in this area. It

15 was their contention that it was difficult -- it would be

16 difficult for them to assure themselves that each combination

17 of carburetor calibration, axle ratio and engine family was,

18 in fact, going to comply with the standards for 90% of

19 production, or on the average, with the deterioration factor

20 unless they ran a test program to verify that fact. They

21 laid out for us a schedule showing the remaining lead time and

22 the time estimates for conducting the testing on all their

23 combinations and concluded that if they were forced to test

24 every combination, they would have difficulty in starting

25 production at the normal time for the 1978 model year.

26 But if, however, their risk would be minimized by

27 having our assembly-line testing limited to those configura-

28 tions that went through certification, they saw no particular

1 problem with the 1978 model year.

2 Other manufacturers seemed to agree with Ford's
3 position in order to limit their liability and not require
4 them to demonstrate in themselves that 90% or the average
5 with deterioration factor of each combination could meet the
6 standards. We agreed to restrict our enforcement testing to
7 only those combinations which were certified.

8 CHAIRMAN JACKSON: That troubles me a little bit in
9 that I would assume that the same configurations are subject
10 to testing via the federal assembly-line test program.

11 MR. RUBENSTEIN: I don't believe so. These are
12 medium-duty vehicles which are for 1978 only and would be
13 considered by EPA to be heavy-duty vehicles.

14 CHAIRMAN JACKSON: Is this medium duty?

15 MR. RUBENSTEIN: Yes.

16 CHAIRMAN JACKSON: So we are just talking about
17 medium duty in the context of its limited --

18 MR. AUSTIN: Right.

19 CHAIRMAN JACKSON: -- applicability of your program?

20 MR. AUSTIN: That's right.

21 MR. DRACHAND: Medium-duty Ford 1978. That's what
22 we are talking about. It falls back from the certification
23 lead time problem.

24 MR. AUSTIN: I think you should look at this as a
25 phase-in of assembly-line testing for this vehicle category
26 as currently these vehicles are covered by the heavy-duty
27 engine certificate. There is no assembly-line testing
28 requirement for 1978. They become subject to assembly-line

1 testing for the first time, and for that one model year, they
2 are going to be subject to a somewhat less stringent require-
3 ment than light-duty vehicles currently are. But for 1979,
4 we are planning to go ahead with the same program as we have
5 in effect for light duty.
6 It would still be our contention that all configura-
7 tions covered by the certificate should be subject to end-
8 use surveillance testing in the future, and they should be
9 able to demonstrate a degree of emission control that is
10 roughly comparable to the configurations which actually went
11 through certification testing.
12 But when we get into these high-volume sampling
13 programs like assembly-line tests or Title 13 surveillance on
14 new vehicles, we thought it was appropriate to give some
15 relaxation in the requirement for a one-year period.
16 CHAIRMAN JACKSON: But you are asking us, if I am
17 not mistaken, on Page 5, the last paragraph of your statement,
18 you are asking us to go ahead and grant the waiver with
19 respect to inspection compliance testing for models that will
20 be subject to assembly-line testing in the future; is that
21 right?
22 MR. AUSTIN: That's right.
23 CHAIRMAN JACKSON: Why don't you ask us for a waiver
24 at such time as they become subject to assembly-line testing?
25 MR. AUSTIN: Well, what we are saying is we think
26 that, when you make the determination that our assembly-line
27 procedures are consistent with 202 of the Act, that should
28 automatically give us the authority to conduct compliance

1 testing. We are not saying make that determination now. We
2 are saying when you make the determination that, in fact, we
3 should be able to do assembly-line testing. That should
4 automatically give us the right to do compliance testing.
5 MR. MACOMBER: I might point out that that just
6 carries forward the same logic that I think that was applied
7 in the recent Federal Register announcement.
8 CHAIRMAN JACKSON: I agree with you. I think it's
9 different if we look at the compliance and inspection test
10 procedure and trying to decide a waiver for that alone,
11 whereas if we are looking at it in the combination with
12 established test procedures on the assembly line, well, then,
13 it's a different issue.
14 MR. AUSTIN: Exactly. That's why we requested
15 that you postpone consideration of the inspection and com-
16 pliance procedures as they relate to motorcylces since we have
17 not firmed up our assembly-line testing procedures for motor-
18 cycles as yet.
19 CHAIRMAN JACKSON: On Page 6 of your statement, the
20 first paragraph, you want a waiver for inspection testing --
21 MR. AUSTIN: Yes.
22 CHAIRMAN JACKSON: -- apart from its relationship
23 to assembly-line testing.
24 MR. AUSTIN: That's correct.
25 CHAIRMAN JACKSON: And inspection testing is now
26 using CVS?
27 MR. AUSTIN: That's correct. Inspection testing,
28 we do a lot of inspection testing when we visit vehicle

1 dealerships. We will look at all the vehicles that are
2 offered for sale. If we find that the vehicles are being
3 sold in uncertified configuration -- Let's assume, for
4 example, a vehicle was certified for sale with an air-injection
5 system, and there is one sitting there in the lot without an
6 air-injection system. Just by virtue of the fact that that
7 component which was supposed to be on the vehicle is absent
8 from the vehicle being sold, we consider that a violation.
9 We believe we should have the authority to pursue enforcement
10 actions for those kinds of violations without having any
11 specific set of procedures and a waiver covering those
12 specific procedures, in effect because basically all they are
13 are quality control type of evaluations or determining whether
14 or not vehicles being sold are, in fact, similar to the
15 vehicles which were certified.
16 It's basically just enforcement of the certification.
17 It's looking at the vehicles being sold to see if, in fact,
18 they are the same configuration that appears in the Part 2
19 certification application.
20 CHAIRMAN JACKSON: But you would look at all vehicles
21 here, not just those that were tested; is that right?
22 MR. AUSTIN: Not just those that were subject to
23 assembly-line testing or our Title 13 compliance testing.
24 Specifically here we are saying that, even if we don't start
25 off the first of the year, 1978, with an assembly-line and
26 compliance testing program for motorcycles, we believe that we
27 should have the authority to visit a Kawasaki dealership, for
28 example, to inspect the vehicles being sold to see if, in

1 fact, they are in conformance with the Part 2 certification
2 application. If we find out that Kawasaki told us they were
3 going to sell a vehicle with a certain type of carburetor
4 and, in fact, they are using last year's carburetor which has
5 a different calibration and is not of the same configuration
6 as they said they were going to sell, we think that should be
7 sufficient for us to pursue enforcement action. We don't
8 think any specific set of procedures or a specific waiver
9 should be required for us to pursue that enforcement action.
10 CHAIRMAN JACKSON: You are suggesting it just flows
11 from the --
12 MR. AUSTIN: From certification.
13 CHAIRMAN JACKSON: -- from certification?
14 MR. AUSTIN: That's right.
15 MR. RUBENSTEIN: It's really based on language in
16 the Federal Register that both California and EPA have adopted
17 about the Administrator's and Executive Officer's authority to
18 request a certain number of vehicles for inspection after a
19 certain model year.
20 CHAIRMAN JACKSON: Do you actually plan on securing
21 these vehicles in any way or do you just go by and look at
22 them?
23 MR. AUSTIN: We just look at them. We don't secure
24 them.
25 CHAIRMAN JACKSON: And you have authority to go to
26 the dealership?
27 MR. AUSTIN: Yes.
28 CHAIRMAN JACKSON: So the issue is the authority to

1 bring an action against the manufacturer?
2 MR. AUSTIN: That's right. I guess the way we look
3 at it, it's kind of -- it's a problem that we detected at a
4 dealership. For example, if someone is selling an uncertified
5 configuration of vehicle, that's essentially a violation of
6 the contract which the manufacturer has made with the state
7 during the certification process and for the certification to
8 have any meaning at all, it seems to me that we need to have
9 the authority to determine whether what's being sold is
10 identical to what the manufacturer guaranteed us would be sold.
11 So it's really part of the certification program
12 when you look at it that way.
13 CHAIRMAN JACKSON: Just a point of clarification.
14 In your documentation, is the inspection procedure separable
15 from the compliance and inspection package?
16 MR. DRACHAND: In the regulations, it is.
17 MR. RUBENSTEIN: Yes. In Section 2101 of Title 13,
18 Paragraph (a) of that section refers to both inspection and
19 compliance testing in terms of the Executive Officer's
20 authority to request vehicles. Paragraphs (b) and (c) refer
21 only to compliance testing. And Paragraph (d) refers only
22 to vehicles selected for inspection.
23 We would also like to clarify that the inspection
24 procedures, we have been concentrating mostly on dealerships,
25 but they also apply to vehicles that are brought to the Air
26 Resources Board either for compliance testing or simply for
27 the purpose of inspection by itself, or vehicles that are
28 brought to the Air Resources Board for compliance testing,

1 for CVS testing are also tested for conformity, and even if
2 those vehicles do comply with the emissions standard and there
3 is a parts non-conformity for some reason, ARB still believes
4 it has the right to take enforcement action.
5 CHAIRMAN JACKSON: Is this brought to the lab for
6 CVS testing for what purpose?
7 MR. AUSTIN: For example, we have an end-use testing
8 program where we have contracted with an organization for
9 procuring vehicles from the general public for testing by the
10 Air Resources Board. I think that's similar to some programs
11 which EPA conducts. When we bring these vehicles in, we
12 not only test them in the as-received configuration to
13 determine emission factors from end-use vehicles, we tune them
14 to manufacturer's specs to see if they are performing as the
15 certification prototypes performed when they are properly
16 adjusted and tuned.
17 We are also inspecting them to see if, in fact, what
18 we are testing is identical to the configuration in which the
19 manufacturer promised to sell in making his application for
20 certification. If we find through that kind of testing
21 program that manufacturers are selling uncertified configura-
22 tions on motor vehicles, again we believe we should have the
23 authority to pursue enforcement actions.
24 CHAIRMAN JACKSON: Have you ever brought an action,
25 just for my own information, under that provision with regard
26 to licensing these vehicles?
27 MR. DRACHAND: Excuse me. What did you say? I
28 didn't understand what you said.

1 CHAIRMAN JACKSON: I asked if you had ever brought
2 an action with regard to the vehicles that were brought in for
3 this type of CVS testing that Mr. Austin just described under
4 this authority?
5 MR. RUBENSTEIN: You are talking about end-use
6 vehicles?
7 CHAIRMAN JACKSON: Yes.
8 MR. RUBENSTEIN: No, I don't believe so.
9 MR. AUSTIN: Kingsley, Ben asked whether we had
10 ever taken an action against a manufacturer after finding that
11 a vehicle was not manufactured according to the certification
12 application.
13 MR. MACOMBER: Are you talking about end-use vehicles?
14 CHAIRMAN JACKSON: Yes.
15 MR. MACOMBER: Not to my knowledge. I think we have
16 detected some problems in the past, but we have solved them
17 without formal enforcement action.
18 MR. AUSTIN: A point of clarification. As far as
19 the waiver would be concerned, we would only be talking about
20 the inspection procedures as they affect new vehicles. And
21 under our current Title 13 regulations, we would have the
22 authority to request manufacturers to make vehicles available
23 to us at the Board's laboratory for the purpose of inspecting
24 them.
25 Quite often, usually we do our inspections at
26 dealerships. In the case of certain vehicles or certain
27 models, it may be difficult or impractical for us to do that.
28 And under our Title 13 regulations, we have the authority to

1 request those vehicles be made available to us.
2 CHAIRMAN JACKSON: Those are new vehicles?
3 MR. AUSTIN: New vehicles.
4 CHAIRMAN JACKSON: And you test it on your own?
5 MR. AUSTIN: That's right.
6 MR. DRACHAND: That's right.
7 CHAIRMAN JACKSON: Are you anywhere else indicating
8 in more detail what the inspection program is, will do, how
9 it's conducted?
10 MR. RUBENSTEIN: Well, the inspection program is in
11 Title 13. It's very broad, and it basically states that
12 vehicles will be inspected for conformity with any applicable
13 California law except for an emissions standard applied to
14 certification and to test procedures.
15 Examples of kinds of laws are sections in the Health
16 and Safety Code which require that new vehicles be identical
17 in all material respects to those that were tested during
18 certification. There is no specific inspection procedure,
19 but it is inspection for compliance with specific laws and
20 regulations.
21 MR. AUSTIN: We like the procedure to be broad so
22 that we can do a rather cursory examination of vehicles
23 routinely but go into much greater detail of examination when
24 we have an emission problem associated with the vehicles. And
25 we are making an attempt to determine why we have such a
26 problem.
27 So, generally, we restrict the inspection to visual
28 observation of the vehicle to see that the obvious pieces of

1 hardware that are supposed to be part of the package are in
2 place. We check some part numbers to see that the proper
3 carburetor, exhaust gas recirculation valve and other equipment
4 is installed.
5 But when we have an emission problem with the family,
6 quite often we would carry the investigation further. Since
7 we are restricted to determining conformance with the certifi-
8 cation application, that kind of puts a boundary on what the
9 program can consist of, and with that boundary in place, we
10 see little need for more specific procedures.
11 CHAIRMAN JACKSON: Do you say anywhere what "in all
12 material respects" means?
13 MR. AUSTIN: I'm not sure if we have defined that.
14 MR. RUBENSTEIN: I don't believe that we have. I
15 believe that it would essentially be construed that all parts
16 identified in the certification documents are, in fact, what
17 is on the vehicle.
18 I would also like to point out that none of this
19 language with respect to inspection testing has been amended
20 as part of this last set of amendments and that this identical
21 language was covered under previous waivers.
22 CHAIRMAN JACKSON: Okay. Thank you, Mr. Austin.
23 MR. AUSTIN: Thank you.
24 MR. EDWIN E. NELSON: Mr. Jackson, members of EPA,
25 ARB, and ladies and gentlemen in the audience:
26 I am Ed Nelson, Assistant Director of Automotive
27 Emission Control, General Motors Environmental Activity
28 Staff.

1 With me today are Harold W. Schwochert, Staff
2 Engineer, California Activities Automotive Emission Control,
3 General Motors Environmental Activity Staff, and also with us
4 today is Richard I. Petersen, Attorney, General Motors Legal
5 Staff.
6 Now, Mr. Jackson, I believe I would like to ask the
7 order of these hearings you would like to address. Would you
8 like to address the assembly-line testing issue first?
9 CHAIRMAN JACKSON: I will admit that, on the agenda,
10 it's first. But I believe CARB inverted the order in their
11 comments, and it's acceptable to us either way you want to go.
12 MR. NELSON: We have no objection to discussing
13 either one of these items first.
14 CHAIRMAN JACKSON: Okay. Well, let's go with
15 assembly-line test procedures.
16 MR. NELSON: Okay. This morning, we would like to
17 present a statement to be given by Mr. Schwochert, and then
18 we will be happy to answer any questions that you may have.
19 MR. HAROLD W. SCHWOCHERT: General Motors offers
20 the following comments regarding EPA's consideration on
21 granting California a waiver that would modify the assembly-
22 line test procedures to include 1978 model year diesel-powered
23 light-duty trucks and medium-duty vehicles. The current
24 assembly-line test procedures apply only to gasoline-powered
25 vehicles.
26 Since California has established specific certifica-
27 tion requirements for light-duty trucks and medium-duty
28 vehicles effective for the 1978 model year, it is appropriate

that the Air Resources Board consider assembly-line testing of certain diesel-powered vehicles.

Several studies of diesel hydrocarbon measurements at both EPA and GM have shown large differences in measured hydrocarbon values over the past months. These differences appear to be primarily associated with heating of the continuous hydrocarbon sampling line and the filter placed in this line to remove particulate matter from the exhaust sample. The elevated sample line temperature also requires assurance that sample lines and analyzer plumbing does not leak.

The above discussion suggests that measurement of diesel emissions, primarily hydrocarbons, is still in process of refinement compared to the vast amount of experience that exists regarding gasoline exhaust emission measurements. Considering these present uncertainties, GM recommends that EPA grant California a waiver to extend the assembly-line test requirements to diesel-powered light-duty trucks and medium-duty vehicles, but the quality audit hydrocarbon test data be used for informational purposes only for the 1978 model year. This year will serve as a learning period to better understand and gain experience using this hydrocarbon measurement requirement, which differs considerably from hydrocarbon measurement of gasoline engine emissions.

The California assembly-line test procedures also require idle hydrocarbon and CO measurements of all diesel light-duty trucks and medium-duty vehicles. The present instrumentation used for gasoline engine hydrocarbon

1 measurement, non-dispersive infrared analyzers with unheated
2 sample lines, is not applicable to meaningful measurements
3 of diesel engines. It is our understanding that this
4 instrumentation is also to be used for diesel engine idle
5 emission testing. To our knowledge, no shop equipment similar
6 to the gasoline equipment is commercially available for diesel
7 engines and, therefore, it is General Motors' further
8 recommendation that the waiver granted to California should
9 also exclude the idle emission test requirement because of
10 the present uncertainty of making a meaningful measurement.
11 CHAIRMAN JACKSON: Have you discussed these two
12 points with the CARB?
13 MR. SCHWOCHERT: In the ARB's testimony, they
14 indicated that we had verbally discussed the latter point with
15 them. I don't think we have discussed the first point
16 specifically with them, this measurement uncertainty on
17 quality audit test, or I shouldn't say "quality audit;" I
18 guess I should say certification testing has perhaps come to
19 the forefront in the last couple of months more prominently,
20 and that issue in itself has not been discussed with the
21 ARB.
22 CHAIRMAN JACKSON: Who's addressing this issue of
23 the uncertainty with regard to the hydrocarbon measurement?
24 Are you discussing that with EPA?
25 MR. SCHWOCHERT: Yes.
26 CHAIRMAN JACKSON: Is there a resolution in sight
27 or --
28 MR. NELSON: Mr. Jackson, we have discussed it

1 extensively with the EPA personnel at Ann Arbor and, in fact,
2 recently Mr. Stork asked us to work with Research Triangle
3 Park to see if we can understand the differences better,
4 especially related to heating of the sample line. And so we
5 think that the right types of activities have been started,
6 but we recognize that we are just in the infancy of learning
7 how to measure accurately diesel emission hydrocarbons, and
8 this is a subject which we do want to pursue with ARB a little
9 further what we think is a major problem, getting repeatable,
10 reproducible answers with today's understanding of the measure-
11 ment process.
12 CHAIRMAN JACKSON: But you are going to be able to
13 solve the problem for certification?
14 MR. NELSON: We will certainly do the best we can.
15 And we have been sharing our experience with EPA and going
16 through a refinement process the best we know how.
17 CHAIRMAN JACKSON: Let's see. Then if you solve
18 it with regard to certification, it would automatically be
19 solved with regard to assembly-line testing; is that reasonable?
20 MR. NELSON: I don't think you can conclude that,
21 Mr. Jackson, because the nature of the production line
22 measurement process doesn't necessarily agree with the official
23 certification process laboratories that are used. I wouldn't
24 want to conclude that it follows that you could do it on
25 assembly line testing instantaneously when you accomplish the
26 same result for certification purposes.
27 CHAIRMAN JACKSON: Are you making a lead time
28 argument about changes you may have to make on the assembly

1 line? I'm trying to understand the nature of this problem
2 because it doesn't -- it just doesn't jump out at me.
3 MR. SCHWOCHERT: In our case, it will be a different
4 laboratory than a certification laboratory to do the testing.
5 Right now we hope to have that laboratory on stream by the
6 start of production. We are not ready to test yet in that
7 laboratory, so we can't say for sure that we will have all of
8 the equipment ready to go.
9 And, of course, when you are talking about something
10 that you don't have a lot of experience in compared to gasoline
11 emission measurements, problems can come up that can take
12 longer to solve than you would anticipate.
13 So it is a different laboratory in our specific
14 case, but we hope to have the thing testing diesels when we
15 are ready to start producing.
16 CHAIRMAN JACKSON: Okay. So it's not arguably that
17 much of a lead-time problem, but somewhat of a technical
18 problem with regard to these differences in measurement, but
19 arguably it's as critical with regard to certification as it
20 is with regard to assembly-line testing, I would think.
21 MR. NELSON: Mr. Jackson, we do think it's a major
22 problem in complying with emission requirements.
23 And to address your earlier question just a little
24 further, we stated clearly in our statement that we think it's
25 appropriate for California to consider assembly-line testing
26 of medium-duty and light-duty trucks that have diesel-powered
27 engines. But we are concerned right now with the lack of
28 agreement when we try to get the same values from a given

1 vehicle at two or three different laboratories. And EPA has
2 recognized that there are problems in this respect.
3 There are some serious penalties that a manufacturer
4 must face if you test thousands of vehicles on the assembly
5 line and get different results than a different laboratory
6 obtains. It's a little different than the certification
7 process where it's a very select procedure of people, of
8 equipment and experience.
9 CHAIRMAN JACKSON: But that's just -- I mean what
10 kind of a problem is that? I'm not trying to downplay it.
11 It's just that you have got to train some people to do the
12 testing on the assembly line. You are going to have to qualify
13 your labs, I assume, for testing on the assembly line. Once
14 you get the labs working for certification, then the normal
15 issues of lab correlation arise.
16 I'm trying to understand why this is any different
17 from any of the other kinds of correlations problems that we
18 have experienced all along. I mean there are problems. You
19 have got to solve them.
20 MR. PETERSEN: Well, we only use one lab, one
21 General Motors lab for certification, whereas with assembly-
22 line testing, we use several different labs. It's not a
23 question of whether or not there is a problem with regard to
24 certification or assembly-line testing. The problem exists
25 in both places. It's one of magnitude in that possibly it
26 will be -- we will be able to come to some kind of agreement
27 for the certification process that won't apply to the assembly-
28 line testing.

1 And you are exposed to a lot more, a lot more testing
2 on the assembly line, different labs and a greater number of
3 labs. In other words, it's a larger problem with assembly-
4 line testing than it is for certification. You are dealing
5 with a handful of cars in certification and a couple of labs.
6 CHAIRMAN JACKSON: I just don't see what difference
7 the number of cars makes.
8 MR. PETERSEN: Well, from our standpoint, the
9 magnitude of the problem is pretty important in that a problem
10 with the assembly-line testing can potentially lead to closing
11 down our assembly line.
12 CHAIRMAN JACKSON: Well, if you never get your cars
13 certified, you never have to worry about the assembly line.
14 MR. PETERSEN: The technological problems ought to
15 be solved, you know, before we jump into that.
16 CHAIRMAN JACKSON: Are you certifying, are you
17 emission testing right now for '78 certification? Do you
18 anticipate that you are going to be certified for 1978?
19 MR. PETERSEN: I don't think the problem's resolved
20 yet.
21 CHAIRMAN JACKSON: Will it be resolved in time to
22 get a certificate for 1978?
23 MR. SCHWOCHERT: We can't say that for sure, but we
24 are -- to answer your first question, we are presently testing,
25 yes, for 1978 certification.
26 CHAIRMAN JACKSON: But it just argues to me that
27 once you get the problems -- and arguably you are going to be
28 certified for '78 or you don't have to worry about the problems

1 of the assembly line. But once you get certified in '78,
2 what is it that makes it impossible to reproduce whatever you
3 are going to do in certification in the same labs or in the
4 labs that you are going to use for assembly-line testing?
5 And I presume that you don't have to use labs all
6 over the country. You could bring the cars to Milford and
7 test them, couldn't you, because you are going to be limited to
8 those you certified. You are talking about your high-volume
9 units only.
10 MR. SCHWOCHERT: What is true, Mr. Jackson, is as
11 far as the differences that are being observed on those, we
12 are seeing changes in the levels that are being measured at
13 various laboratories. And I guess at some point in time
14 someone will have to say, "Yes, that vehicle does certify."
15 For example, EPA Ann Arbor Lab will have to go with the levels
16 that are being measured at the point in time when they make a
17 decision on certification. The vehicle, the configuration,
18 certifies or does not certify.
19 If changes should continue to be made in instrumenta-
20 tion that would measure yet higher levels later on on that
21 model year production, then you would be subjecting the
22 rest of the production to some measurement changes that had
23 occurred as a result of the improvement in the technology
24 associated with hydrocarbon measurement that didn't exist at
25 the time of certification, or knowledge that did not exist
26 at that time.
27 And that's the point that we are trying to bring
28 up, I guess, that there is a little uncertainty about what the

1 true emission levels are or will be agreed upon. So while we
2 are trying to agree upon this, let's measure some production
3 vehicles, gain some background and use that information to
4 then do a better job in 1979 in measuring what -- you know,
5 agreeing on what the procedure should be to measure the level.
6 CHAIRMAN JACKSON: Now, with regard to the issue of
7 the idle test analyzer, you are of the opinion that there is
8 no equipment available for this, and you are making a
9 technological argument in that area, that it is technologically
10 infeasible to do it because the equipment to do it is not
11 available. Is that it?
12 MR. SCHWOCHERT: That's basically correct. One can
13 make the measurement with today's existing equipment. We
14 question whether this will have any meaning, and that's
15 basically what we are suggesting: that until there are some
16 manufacturers that do develop some equipment to measure idle
17 emissions from diesels, then we should consider excluding this
18 requirement from diesel-powered vehicles.
19 CHAIRMAN JACKSON: Have you talked with the CARB
20 about this?
21 MR. SCHWOCHERT: Yes. They referenced this in
22 their discussion. We have talked to them about this over the
23 phone, but didn't resolve the issue, obviously. We just
24 discussed it.
25 And I think we both recognized that maybe today's
26 instruments do not respond equally between diesels and gasoline-
27 powered vehicles.
28 The certification test requirements were also

1 discussed with the ARB at a workshop, but this specific subject
2 of using one year's data for informational purposes only was
3 not discussed. The instrumentation discussion has gone on
4 between us and ARB, but not the --
5 CHAIRMAN JACKSON: This would go beyond your concern
6 about the one-year use of informational data on configurations
7 that were not subject to certification testing?
8 MR. SCHWOCHERT: The idle testing?
9 CHAIRMAN JACKSON: No, I'm jumping back to the other,
10 the other issue now.
11 In other words, they made the statement that for the
12 assembly-line testing that they are talking about in '78, that
13 they wouldn't make it applicable to those configurations that
14 were not certification tested. And does that particular
15 relief give you any kind of help for this situation?
16 MR. SCHWOCHERT: No, it does not, because the high
17 volume, the high-volume configuration, would still require
18 testing. And, of course, that's what we would be concerned
19 about.
20 CHAIRMAN JACKSON: How many vehicles are we talking
21 about?
22 MR. SCHWOCHERT: Total production.
23 CHAIRMAN JACKSON: Well, two percent of total
24 production is all we are really interested in.
25 MR. SCHWOCHERT: We will submit that information
26 for the record if you would like it, Mr. Jackson.
27 CHAIRMAN JACKSON: I'm just trying to understand the
28 magnitude of the problem here, which seems to be your basis for

1 asking us to deny what they want to do in 1978. Seems like
2 some more detail would be appropriate in terms of what kind of
3 specific impacts you are talking about.
4 You are really talking about, as I see it, a
5 technological end feasibility argument with regard to the
6 measurement equipment and your ability to put it on the
7 assembly line. And, quite frankly, the argument has not been
8 made very well. It's not very convincing, as I see it now.
9 It may be there. There just doesn't seem to be a lot of
10 trappings on it.
11 MR. NELSON: Perhaps, Mr. Jackson, we could clear up
12 the problem a little better by explaining some of the exact
13 test results we have obtained when we compared General Motors
14 laboratory results with those of EPA. And some of this is
15 very, very concerning to us because, in a period of a month's
16 time, we find different emission results from what appears to
17 be the same vehicle.
18 Mr. Schwochert will discuss some of those details.
19 MR. SCHWOCHERT: If we consider some correlation
20 testing that has gone on between our certification laboratories
21 and the Ann Arbor laboratory, we find that -- well, if we go
22 back to September of '76 through April of '77, we find that
23 on several sets of vehicles, that the variation between
24 GM laboratory and EPA laboratory varied from 13 -- EPA being
25 13% lower to 43% lower over the period of September to March.
26 The vehicle which was 13% lower at EPA in March was the same
27 vehicle that was tested in April at both laboratories. EPA
28 laboratory measured this specific vehicle about 10% higher in

1 April, and our laboratory measurements on this vehicle
2 remained constant.
3 And in all cases, we are talking about repeat tests
4 of two or more tests in each laboratory at each point in time.
5 So we have seen a change from considerably lower
6 emission levels at EPA to somewhat higher emission levels over
7 the last few months. And it's this type of change that we
8 are concerned about.
9 CHAIRMAN JACKSON: Are you doing any similar work
10 with the CARB?
11 MR. SCHWOCHERT: No. On diesels, we are not doing
12 any correlation work with them.
13 MR. PETERSEN: This kind of inconsistency can
14 possibly be clarified or corrected for certification purposes,
15 but we can't -- we can't live with this kind of uncertainty on
16 assembly-line testing where you are dealing with a go/no-go
17 decision on the assembly line.
18 I think EPA has a great deal of flexibility in the
19 certification area. And this kind of inconsistency and lack
20 of correlation between data can be more easily resolved for
21 certification purposes than it can for assembly-line com-
22 pliance purposes.
23 CHAIRMAN JACKSON: Okay. What was the other topic
24 here?
25 MR. NELSON: Mr. Jackson, if you would like, we
26 would be happy to present our statement on California Title
27 13 testing. Or if you would like, we can come back and
28 submit that one whenever the subject comes up, if you want to

1 handle them separately.

2 CHAIRMAN JACKSON: You are talking about the com-

3 pliance and inspection testing --

4 MR. NELSON: Yes.

5 CHAIRMAN JACKSON: -- of '77?

6 MR. NELSON: Yes.

7 CHAIRMAN JACKSON: We will listen to that right now

8 if you want.

9 MR. NELSON: First of all, Mr. Presiding Officer, I

10 would like to indicate that General Motors will submit a copy

11 for the record. We did not get copies available for this

12 particular hearing.

13 Although this is only one of the many subjects to

14 be covered in the next several days, General Motors is

15 appreciative of the opportunity to comment on Title 13, the

16 California Title 13 test procedure that is being considered by

17 EPA at this hearing.

18 General Motors has one major problem with this

19 Title 13 test procedure. That is, it is not consistent with

20 the other test procedures which govern certification and

21 assembly-line testing.

22 This comment is not new, but one which we made to

23 the California ARB on June 24, 1976.

24 Basically, we are concerned about the different

25 treatment of a vehicle engine family in the certification and

26 assembly-line test procedure and the use of subfamily or sub-

27 group in the present Title 13 test. We believe it is unfair

28 for a manufacturer who, in good faith, has complied with the

first two test requirements to be later evaluated by a different set of rules.

Perhaps some discussion of the details will help explain the area of concern that we have.

The assembly-line test requires that the vehicle manufacturer test, on the quality audit portion of the test procedure, a sample size of at least two percent of the vehicles built with engine families that have been certified for California sale. This particular portion of the assembly-line test, the quality audit test, also requires that the sample must be representative of a hundred percent of the vehicle configurations certified and built for California sale.

The Title 13 test procedures, which are claimed to be an ARB check on data submitted by various manufacturers, would now permit ARB to select a small subgroup of vehicles from an engine family for testing. This subgroup can be any combination of engine, fuel system, drive train and vehicle configuration.

Certainly, when the random two percent sample -- often a number of tests approaching several hundred -- is compared with test results from a small subgroup of vehicles, the average test results may, in fact, be different because of different sampling techniques. This is an apples-and-oranges comparison. It does not provide the stated objective of a cross-check of the manufacturer's data but, instead, merely proves that a small subgroup may, and probably will, be different than the average of the complete engine family

1 Thus, the procedure being considered here does not
2 accomplish the main objectives stated by ARB, and it may also
3 subject the manufacturer to the loss of the right to build
4 vehicles which have passed California certification and
5 assembly-line tests.
6 We assume that EPA does not want to condone and
7 approve the use of a test procedure that potentially penalizes
8 a manufacturer unfairly.
9 If EPA grants the requested waiver, it should do so
10 with the condition that subfamily or subgroup be deleted from
11 the test procedure.
12 CHAIRMAN JACKSON: I think, just for purposes of
13 clarification, you are right in what you understood just
14 based on the testimony of the CARB earlier today, and that is
15 they do intend to apply their Title 13 compliance testing to
16 subgroups of vehicles.
17 MR. NELSON: That is the understanding we have, and
18 that's the basis for making the statement we made.
19 I am confused, Mr. Jackson, that ARB seems to be
20 asking for a waiver on additional things from what we under-
21 stood from the notice. The dealership inspection, for
22 example, we did not realize that it was going to be considered
23 at this hearing, and we would respectfully request the oppor-
24 tunity to supply written comments. This is a test procedure
25 that was billed as being consistent with the certification
26 process. It definitely is not. It disables a portion of
27 the emission control system and requires emission measurements
28 at idle that do not correspond to anything that's required in

1 the certification process.

2 It seems to me to be a separate subject that ought

3 to be, in my opinion, appropriately announced for hearing.

4 We have had a little problem with a particular engine

5 that does not have an idle CO adjustment, and because the

6 value doesn't meet, the idle CO value doesn't meet a pre-

7 scribed level by ARB, the dealer has to make an adjustment.

8 And that's impossible, and we have not been able to get ARB to

9 agree that that idle CO value, which is the certified value,

10 is acceptable because it's above the value that was previously

11 determined as their guideline and test procedure.

12 We have comments such as those that we certainly

13 want to submit for the record because we did not understand

14 that that portion of the inspection was being considered.

15 The assembly-line test has an inspection procedure

16 that we did not object to because we assumed that that was

17 the inspection that was being discussed at today's hearing.

18 CHAIRMAN JACKSON: In other words, you didn't

19 realize that they were talking about the inspection portion of

20 their inspection and compliance testing procedure; is that

21 right?

22 MR. NELSON: That's correct.

23 CHAIRMAN JACKSON: As it was described by Mr. Austin

24 earlier, that was new to you?

25 MR. NELSON: That was new for the purpose of this

26 hearing, yes.

27 CHAIRMAN JACKSON: And you are suggesting that some

28 way the notice was deficient?

1 MR. PETERSEN: I think we would be satisfied in
2 submitting comments for the record before the record closes
3 on this.
4 CHAIRMAN JACKSON: Fine. Well, we invite those
5 comments, whatever they are.
6 MR. PETERSEN: The dealership inspection program
7 specifically is what Mr. Nelson refers to where the Board
8 disconnects air pumps on cars and performs idle emission
9 tests.
10 CHAIRMAN JACKSON: No, we know that they do that.
11 MR. NELSON: Yes, sir, that's correct.
12 CHAIRMAN JACKSON: This is with regard to passenger
13 cars?
14 MR. NELSON: And light-duty trucks.
15 CHAIRMAN JACKSON: But you are talking about some-
16 thing they have done in the past, I assume.
17 MR. NELSON: It has been done, yes.
18 CHAIRMAN JACKSON: And you are talking about that
19 with respect to light-duty vehicles?
20 MR. NELSON: Yes.
21 CHAIRMAN JACKSON: Not anything else?
22 MR. PETERSEN: I'm not sure what you mean.
23 CHAIRMAN JACKSON: Well, light-duty passenger cars,
24 or does it include light-duty trucks or anything else?
25 MR. NELSON: I'm not sure of the exact categories.
26 It definitely applies to light-duty vehicles, light-duty cars
27 and trucks.
28 CHAIRMAN JACKSON: With regard to your concerns about

1 the subgroup argument, what's your position? Are you
2 suggesting that some groups of cars don't have to meet the
3 standards and other groups do?
4 MR. NELSON: No, sir. The certification process
5 allows the regulatory authority to pick those cars they want
6 to evaluate.
7 It's a similar problem as we heard described earlier
8 on the truck issue: that the regulatory agencies have
9 recognized that there is a big burden associated with picking
10 a large number of vehicles, so they select the vehicles that
11 appear to have the highest emission potential from the certifi-
12 cation fleet; and then as long as the rest of the vehicles
13 have the same hardware and calibrations, it has been accepted
14 by EPA and ARB in the past that those vehicles are, therefore,
15 certified.
16 So that gives the manufacturer a license to, so to
17 speak, a license to do business. Now they come along to an
18 assembly-line test, and those requirements are very well
19 spelled out and the evaluation is spelled out. But it's on
20 the total engine family basis. Either 90 percent have to
21 comply or, as Mr. Austin mentioned earlier, the average for
22 that vehicle family times the deterioration factor must comply.
23 And then the third step of the test procedure is
24 a different evaluation where you can look at a small subgroup
25 and make a different determination than you do from the total
26 assembly-line test procedure.
27 CHAIRMAN JACKSON: Have you got some sort of an
28 argument, mathematical argument, that will show that in some

1 way this prejudices the manufacturer that's making cars and
2 meeting the standards?
3 MR. NELSON: We can certainly come up with a
4 mathematical argument that will illustrate the point very
5 clearly.
6 CHAIRMAN JACKSON: Is it realistic?
7 MR. NELSON: Sure. From samples of data that we
8 have already obtained, or theoretical textbook type of analysis,
9 that will accomplish the objective. And the problem that we
10 see is that the manufacturer who, in good faith, complied with
11 the first two steps, then has a different set of rules for the
12 third step.
13 CHAIRMAN JACKSON: What I get out of this is, what
14 you are telling me is that, unless in certification they test
15 each and every possible subgroup, that you shouldn't anywhere
16 else evaluate that particular subgroup for compliance?
17 MR. PETERSEN: I think what Mr. Nelson is saying is
18 that it seems fundamentally unfair to us that a manufacturer
19 can certify his vehicles under one set of rules, build
20 vehicles which are in all material respects substantially the
21 same design, specs as the certification vehicle, be subjected
22 to an assembly-line test and comply with that assembly-line
23 test, and still have to jump over another hurdle which has
24 inconsistent rules with the first two requirements.
25 CHAIRMAN JACKSON: Well, is it a technological
26 argument? I mean you can show that you are going to have to
27 make some sort of design changes that are going to have
28 implications of lead time and cost because of this alleged

1 inconsistency?

2 MR. PETERSEN: I think it's basically a due-process
3 argument, and possibly a hardware argument, I mean.

4 MR. NELSON: Mr. Jackson, I would like to submit that
5 it would be a new requirement that involves the technical
6 capability and lead time to get there if you had to demonstrate
7 that each and every possible subgroup complies with the certi-
8 fication requirement. That would require additional time and
9 perhaps technology.

10 CHAIRMAN JACKSON: But can you show that? The issue
11 here is you are making a claim with regard to the testing of
12 subgroups and the Title 13 program, and you are alleging that
13 it will cause -- will be inconsistent and somewhat prejudice
14 you. The issue is how? Is that for sure? Are we talking
15 about one in nine chances or one in a thousand that this will
16 ever happen in such a way that it will in some way prejudice
17 the manufacturer who has gone through certification and
18 assembly-line testing, or are we talking about one in two
19 chances? I don't have any kind of appreciation for the
20 magnitude of the concern we are talking about.

21 MR. NELSON: We would be glad to submit that for the
22 record, Mr. Presiding Officer. We have not looked at the
23 exact percent of time that there could be a problem. We say
24 that it's a different rule than what we took the first two
25 steps on and, therefore, it looks like the possibility of
26 having some very severe penalties and losses because we had
27 a third test requirement which, in fact, was different than
28 the first two.

1 But we can attempt to approach statistically the
2 problem you are describing.
3 CHAIRMAN JACKSON: I think that would be helpful.
4 Mr. Nelson, thank you very much.
5 MR. NELSON: Thank you.
6 CHAIRMAN JACKSON: Go ahead.
7 MS. HELEN PETRAUSKAS: Mr. Chairman, members of the
8 panel:
9 My name is Helen Petrauskas. I'm an attorney for
10 Ford Motor Company.
11 The issues raised by this portion of California's
12 request for a waiver of federal preemption, simply stated, are
13 as follows: Are unique California compliance and inspection
14 testing requirements, i.e., enforcement procedures relating
15 to emissions from new motor vehicles preempted by the Clean Air
16 Act as amended, and, if so, can preemption be properly waived
17 by the Environmental Protection Agency in the case where the
18 underlying standards and certification test procedures are
19 identical to those adopted by EPA?
20 Further, is a waiver proper if enforcement procedures
21 are inconsistent with CARB certification and assembly test
22 procedures, as well as Section 202(a) of the Clean Air Act?
23 It is Ford's view that a waiver is required, and
24 that no waiver cannot be granted for enforcement procedures
25 where the underlying standards are no more stringent than
26 EPA's or for enforcement procedures which are not consistent
27 with Section 202(a).
28 Section 209(a) of the Clean Air Act, as amended,

1 clearly expresses a broad Congressional intent to preempt state
2 control of emissions of air pollutants from new motor vehicles.
3 The preemption applies to "any standard" and enjoins all states
4 from adopting "certification" or "inspection" or any other
5 "approval" relating to control of emissions from new motor
6 vehicles. Moreoever, Section 209(a) prohibits in the dis-
7 junctive the adoption or the enforcement of any form of new
8 motor vehicle emission requirements. The language of
9 Section 209 is so clear and unequivocal that no further con-
10 sideration of this issue should be necessary.
11 Even a superficial consideration of the effect of a
12 finding by EPA that enforcement procedures are not preempted is
13 sufficient to illustrate the disruption which could occur.
14 First, such a finding would not simply relate to
15 California but to all other states and political subdivisions
16 thereof.
17 Second, enforcement procedures could arguably
18 encompass a variety of measures -- penalties, repairs,
19 recalls, limitations on future sales -- limited only by the
20 imagination of state and local legislatures. An EPA finding
21 that enforcement procedures per se are not preempted could
22 create an impetus to each of the states to promulgate unique
23 enforcement procedures with respect to federal emission
24 standards. Under these circumstances it is conceivable that
25 enforcement measures adopted could be flatly inconsistent with
26 federal enforcement proceedings.
27 For example, in the case of a recall conducted
28 pursuant to Section 207(c) of the Clean Air Act, is it in the

1 public interest to require manufacturers to secure approval of
2 a remedial plan not only from EPA -- but also from as many
3 states or state subdivisions as may elect to adopt unique
4 enforcement proceeding? The answer must be no. Yet Ford can
5 conceive no statutory or rational basis for distinguishing
6 between preemption of an enforcement proceeding adopted by
7 California and one adopted by any other state. Both are
8 preempted -- with resepct to the one, California, under certain
9 conditions this preemption may be waived.
10 Ford has elsewhere recited in detail its views of
11 the findings which must be made by EPA before preemption may
12 be waived pursuant to Section 209(b). In this instance the
13 most important of these are the following:
14 (1) Are the California standards and certification
15 test procedure in question more stringent than the federal
16 counterparts?
17 (2) If so, are the accompanying enforcement pro-
18 cedure consistent with Section 202(a) of the Clean Air Act?
19 Insofar as the 1978 and subsequent medium-duty truck
20 standards are concerned, EPA has already found that the 1978
21 California standards applicable to medium-duty vehicles are
22 more stringent than corresponding federal standards.
23 I might add parenthetically that in connection with
24 that grant of waiver, EPA agreed that compliance with the
25 California certification procedure was deemed to constitute
26 compliance with the federal heavy-duty engine requirements
27 that may be applicable to the engines that are in those
28 vehicles.

1 The federal standards and procedures applicable to
2 motorcycles, on the other hand, are, in California's words,
3 "equivalent in stringency to our own."
4 Because the first criterion noted above is not met,
5 it would appear that EPA's inquiry into the motorcycle portion
6 of this matter should be at an end.
7 Mr. Buist will now review the consistency problem
8 we have with the enforcement procedure insofar as it relates
9 to medium-duty vehicles.
10 MR. DONALD R. BUIST: In the case of the enforcement
11 procedures applicable to medium-duty trucks, one important
12 issue requires resolution. Understanding this issue requires
13 an understanding of the background of the 1978 model year
14 medium-duty truck standards adopted by California.
15 On March 31, 1976, CARB defined a new class of
16 medium-duty motor vehicles and adopted standards applicable to
17 this new class of vehicles. At the same time CARB directed
18 the staff to hold a workshop at which proposals could be
19 developed to deal with the lead time problems inherent in the
20 action taken by CARB.
21 On June 30, 1976, following the staff workshop,
22 California adopted the test procedures applicable to medium-
23 duty vehicles designed to alleviate, in part, these very
24 stringent lead time and technological problems. As described
25 by EPA in the January 11th, '77, Federal Register.
26 "The purpose of these changes is to minimize the
27 certification effort and lead time problems by reducing
28 the need for special medium duty durability vehicles,

1 provided that the medium duty and light duty truck
2 emission control systems are essentially the same. As
3 stated by representatives of the Ford Motor Company, these
4 changes permit 'carry-over' and 'carry-up' of California
5 light duty truck engine codes into the medium duty class,
6 and use of carry-over light duty truck deterioration
7 factors. The changes also limit certification and quality
8 audit testing to high volume transmission/inertia weight/
9 axle combinations of unique medium duty engine codes.
10 These amendments will permit Ford to significantly reduce
11 the number of unique, new engine codes or calibrations
12 which will have to undergo certification testing."
13 At the CARB staff workshop conducted one week prior
14 to the adoption of the medium-duty truck standards, and in
15 anticipation of this action, Ford recommended that the amend-
16 ments to Section 2101 of Title 13 of the California Adminis-
17 trative Code, adopted by CARB on June 24, 1976, expressly
18 provide that so-called "Title 13" testing of medium duty
19 vehicles be limited to the vehicles represented in the test
20 fleet on the basis of which certification was granted. CARB
21 declined to adopt this change and stated that this issue would
22 be considered at the time CARB amended the 1978 Assembly Line
23 Test Procedures.
24 On January 25, 1977, CARB amended the Assembly Line
25 Test Procedures applicable to 1978 and subsequent year
26 passenger cars, light-duty truck and medium-duty vehicles.
27 The staff report which accompanied the regulations acted upon
28 at this hearing stated:

1 "This revision adds medium-duty vehicles to the
2 assembly-line test procedures as this class of vehicles
3 has been added to the standards and test procedures for
4 the 1978 model-year. However, the selection of vehicles
5 will be biased toward and compliance will be based upon
6 configurations actually tested for certification."
7 Accordingly, Section 3 of the applicable test
8 procedure now provides:
9 "Of the medium-duty vehicles chosen for quality
10 audit testing, approximately two-thirds shall be from
11 those configurations tested for certification and
12 approximately one-third shall be from those configurations
13 not tested for certification. The data from the two-thirds
14 group will be used for evaluation according to Section
15 C.5. of these procedures and the data from the one-third
16 group will be for information only."
17 Unfortunately CARB has not taken any action to
18 conform the so-called Title 13 compliance/inspection test
19 procedures to its assembly-line procedures.
20 This entire matter is further confused by the fact
21 that the Notice of this proceeding (42 Fed. Reg. 19372) and
22 Attachment "L" to CARB's letter of January 20, 1976 on its
23 face would appear to apply to medium-duty trucks even though
24 CARB's waiver request of January 20, 1977 nowhere mentions
25 medium-duty vehicles.
26 It is Ford's view that unless the test procedures
27 referenced in subsection 2101(c) of Attachment "L" are amended
28 to restrict compliance testing of 1978 and subsequent model

1 year medium-duty vehicles in a manner consistent with the
2 1978 Assembly Line Testing and Certification Procedures no
3 waiver may be granted. The record before CARB and EPA
4 clearly demonstrates that in the absence of such amendment,
5 the lead time remaining prior to the 1978 model year is
6 inadequate to enable compliance with this requirement. In
7 this regard CARB's testimony before the EPA on August 25,
8 1976 is sufficient to illustrate this point.
9 ". . . the ARB held a workshop with the manu-
10 facturers which resulted in changes to the certification
11 vehicle selection procedures on June 30, 1976. These
12 changes minimized the certification burden and increased
13 the available lead time by virtually eliminating the
14 necessity for special medium-duty vehicle durability
15 vehicles provided that the medium-duty vehicle emission
16 control systems are essentially the same as the light-
17 duty truck systems."
18 The sole conclusion that can be drawn from the
19 above cited testimony by the CARB is that lead time is
20 inadequate to meet inspection tests which are different from
21 and substantially more burdensome than the applicable
22 certification requirements.
23 I would like to add, Mr. Jackson, that we were
24 very pleased that CARB entered into the record that they have
25 no intention of Title 13 testing of medium-duty vehicles that
26 are not of the same configuration that were used for certifi-
27 cation. However, this is for 1978 I'm speaking now.
28 CHAIRMAN JACKSON: I'm not sure they did that.

1 MR. BUIST: It's our belief they did. They are
2 indicating they did.
3 CHAIRMAN JACKSON: Title 13 testing under the CARB
4 procedures would not apply to medium-duty trucks, '78, other
5 than those that were those configurations which were actually
6 tested for certification.
7 MS. PETRAUSKAS: The procedure on its face applies
8 to all motor vehicles. For example, if you look at Section
9 2101, it says "any vehicle," "The Executive Officer may, with
10 respect to any vehicle being sold, offered for sale," etc.
11 If you look at the test procedure that's cross-
12 referenced in Section 2101, that procedure likewise speaks in
13 terms of any vehicle and all vehicles.
14 At the time we made our recommendation to CARB to
15 make these requirements consistent with both certification and
16 assembly-line test requirements, we would have amended
17 Section 2101 to indicate that compliance testing and vehicle
18 selection should be limited to those vehicles which were
19 tested under certification.
20 The testimony this morning is a little bit confusing
21 because, as Mr. Buist pointed out, we understood, at least
22 in part, California to say that their intention is not to do
23 testing of these other vehicles, that is, those that weren't
24 tested for certification purposes. But the written testimony
25 speaks in terms of -- And I am reading now from Page 6 of
26 the CARB testimony: "We further ask that California be
27 granted a waiver for inspection testing apart from its
28 relationship to assembly-line testing for all vehicles."

1 And I'm not sure I understand what that means.
2 CHAIRMAN JACKSON: Inspection testing being that
3 part where a visual examination as opposed to compliance
4 testing, which is the CVS testing.
5 MS. PETRAUSKAS: I wonder if you can give me a
6 section reference on that, Mr. Jackson, because I don't know
7 where -- I'm not aware of the procedure that spells it out.
8 CHAIRMAN JACKSON: That's the question I asked when
9 CARB was up here. That's why I asked it.
10 MS. PETRAUSKAS: I'm curious.
11 CHAIRMAN JACKSON: Mr. Austin, do you want to
12 clarify this point for us, or just let us keep on muddling
13 around?
14 MR. AUSTIN: Perhaps I can clarify one of the points
15 by referring to some language that's in our test procedures
16 adopted June 24th, 1976, referring to the compliance testing.
17 Ford has apparently looked at the first paragraph of those
18 procedures and concluded that we intend to apply Title 13
19 enforcement testing to all medium-duty vehicles for 1978.
20 That paragraph reads:
21 "These procedures are applicable commencing with
22 the '77 model year to any engine family or any subgroup
23 within an engine family selected for compliance testing
24 pursuant to Section 2101 of Title 13, California
25 Administrative Code."
26 That does seem to imply that we will be subjecting
27 all subgroups of medium-duty vehicles to testing. However,
28 the two following paragraphs read as follows:

1 "The test procedure shall apply to any engine
2 family or subgroup if the engine family is evaluated
3 according to quality audit test procedure, Option 1,
4 90% pass rate, during assembly-line testing. Test
5 Procedure 2 shall apply to any engine family or subgroup
6 if the engine family is evaluated according to quality
7 audit test procedure, Option 2, during assembly-line
8 testing."
9 Well, for the subgroups of medium-duty vehicles
10 which were not subject to certification testing, neither one
11 of these paragraphs apply, and it was our understanding --
12 it was our intent, therefore, to have those subgroups not
13 subject to Title 13 testing. You only have two paragraphs
14 here telling you how you apply the Title 13 test procedure to
15 vehicles and if, in fact, Option 1 or Option 2 for assembly-
16 line testing does not apply to a subgroup, then the compliance
17 testing doesn't apply to the subgroup.
18 CHAIRMAN JACKSON: That's certainly one way to get
19 there.
20 MS. PETRAUSKAS: I wonder if I can make a comment.
21 If I understand the 1978 assembly-line test
22 procedures correctly, it is a requirement of the test pro-
23 cedure that one test vehicles other than those selected for
24 certification, but the results of that test will not be used
25 in any compliance determination.
26 MR. AUSTIN: That's correct.
27 MS. PETRAUSKAS: So that all vehicles, including
28 those not tested for certification, are vehicles subject to

1 assembly-line test requirements.

2 MR. AUSTIN: Right. But not for enforcement
3 purposes. And we have, I think, been assuming that, if the
4 manufacturer was in no jeopardy, they would have no particular
5 problem with subjecting subgroups to testing for informational
6 purposes only.

7 MS. PETRAUSKAS: Well, Mr. Austin, I don't think we
8 want to beat this one to death much more. I think it's
9 important that any waiver decision reflect the understanding
10 of what the requirements are.

11 MR. AUSTIN: Well, we have stated our intent for
12 the record. This language is not as clear as it probably
13 should be, but that is the way we intend to conduct the
14 program, not to jeopardize the subgroups which were not
15 subject to certification testing for the '78 model year.

16 CHAIRMAN JACKSON: Thank you, Mr. Austin.

17 Does that leave you with continuing concern about
18 the compliance testing for other groups of vehicles?

19 MS. PETRAUSKAS: The concerns we have -- And they
20 are the ones that are discussed on the first several pages of
21 our statement -- relate to the fact that California in its
22 January 20th letter, January 20th, 1977, letter to EPA puts
23 the issue in terms of need one obtain a waiver for enforcement
24 procedures. Put another way, that same issue is: Are
25 enforcement procedures preempted?

26 The purpose of the first three pages is to say yes,
27 enforcement procedures are preempted, and for the very
28 reasons stated, they must be preempted.

1 CHAIRMAN JACKSON: Okay. But getting back to the
2 question, which was: Do you still have problems with the
3 subgroup testing as it relates to other classes of vehicles
4 as opposed to just medium-duty trucks. We have found through
5 clarification by the CARB that they don't intend to use the
6 Title 13 testing on any subgroup that was not subject to
7 actual testing and certification, as well as assembly-line
8 testing.
9 MR. BUIST: Well, I guess we have concern with
10 subgroups. But we have discussed it with CARB at previous
11 workshops. It was our understanding from the workshop that
12 subgroups would be tested only if there was a reason, there
13 was cause to test them; that we would be notified prior to
14 the testing what that particular subgroup represented and
15 why CARB was going to test it, and that the determination of,
16 or the final judgment as a result of testing that subgroup
17 would be addressed under 2101(c), Title 13, which reads that,
18 "The Executive Officer shall consider quality audit test
19 results and any additional test data and other information
20 provided by the manufacturer, prior to reaching a decision."
21 And I guess under those conditions, we are satisfied.
22 CHAIRMAN JACKSON: But you don't have any problems
23 with it, though? It doesn't create the same problem in your
24 mind that General Motors articulated earlier?
25 MR. BUIST: No, I guess not.
26 CHAIRMAN JACKSON: Now, with regard to the question
27 of about whether it needs to be -- whether it is subject to
28 preemption or not, I'm sure you have read our documents which

1 reflect on our view of this, that if -- if these procedures
2 are in connection with the assembly-line test procedure, it,
3 indeed, is an additional compliance measure that should not
4 incur anymore -- any technology problems or any lead time
5 problems. In other words, you can view it as sort of covered
6 under the concept of the assembly-line test procedure.
7 Taken by itself without the companion assembly-line
8 test procedure, if a rationale would have to apply -- and,
9 yes, indeed, I would suggest that it would be the proper
10 subject for consideration for a waiver.
11 Taken in the context, though, of an assembly-line
12 test program in place, then these procedures are merely, as
13 they have pointed out, as the CARB has pointed out and as we
14 have agreed with them, a check procedure to assure what they
15 saw by virtue of the manufacturer's testing on the assembly
16 line is reflected in cars that actually get out to the dealer-
17 ships.
18 So I think if you companion the program, you have
19 got a different argument. Taken by itself, these compliance
20 testing procedures may be a true subject for consideration of
21 a waiver. And I think if, as long as we look at it like
22 that, we don't have to worry about your fear of other states
23 coming in and willy-nilly adopting such things, because they
24 weren't considered something that should have been preempted
25 and a waiver granted.
26 Do you follow me?
27 MS. PETRAUSKAS: Let me restate what I think I
28 understood you to say.

1 First, you said that enforcement procedures may be
2 eligible for a waiver of preemption, depending on what the
3 underlying -- if the underlying standard is eligible.
4 CHAIRMAN JACKSON: Right. Right. In other words,
5 you have embraced within the concept of a waiver a number of
6 different things that fall within it, starting with the
7 standards and then certification and then assembly-line
8 testing, and there are other things.
9 So there is only one state that can be granted a
10 waiver for those things, that broad waiver concept, and they
11 have been granted a waiver in that context. And in one
12 particular instance, not before us today, we have agreed that
13 the compliance inspection test procedures were covered, or
14 were a part of another waiver because they didn't involve an
15 additional burden. They were merely an enforcement-checking
16 technique.
17 Okay. Because they were in companionship with
18 certification and assembly-line testing, okay?
19 Now, if we were looking at compliance inspection
20 and testing by itself without these other measures for which
21 we have the umbrella we described, they may be proper subjects
22 for waiver consideration.
23 MS. PETRAUSKAS: I don't know if our difference is
24 really semantical. I'm saying that all of those requirements
25 are preempted. Some of them may be eligible for a waiver of
26 preemption.
27 CHAIRMAN JACKSON: They are preempted, correct, but
28 it depends on where they start from. If you start from

1 compliance and inspection test procedures, then it may be a
2 subject for consideration of preemption. But if it's a part
3 of another program that's already been granted a waiver --
4 MS. PETRAUSKAS: But in any case, its eligibility for
5 a waiver would be determined the way it always is, and that's
6 namely by satisfying the requirements of Section 2101. I
7 don't think we are saying anything different, Mr. Jackson.
8 CHAIRMAN JACKSON: I don't think so, either. I just
9 thought it would be helpful to clarify with regard to the
10 first remark you made about where we are coming from on this
11 because there is a potential for confusion in the way that we
12 have handled this precise issue in connection with another
13 control program.
14 MS. PETRAUSKAS: All right.
15 CHAIRMAN JACKSON: Thank you very much.
16 We find ourselves in a most unusual predicament.
17 We find we are ahead of schedule. We have never been ahead
18 of schedule before. We don't know what to do.
19 We are going to ask that the California Air Resources
20 Board present their statement with regard to reconsideration
21 of the October 1, 1976, motorcycle waiver. We will take
22 that testimony and then break for lunch.
23 MR. AUSTIN: On the subject of exhaust emission
24 standards for motorcycles, in our letter to you of November 1,
25 1976, we stated our position that since California's exhaust
26 emission stnadards and test procedures for 1978 through 1981
27 model-year motorcycles were identical to those adopted by EPA,
28 we would not require manufacturers to obtain a separate

1 California approval prior to sale in California.

2 We also indicated that we intend to enforce the
3 federal and California emission standards pursuant to Section
4 43008 of the California Health and Safety Code. The enforce-
5 ment procedures which we will shortly adopt will be the
6 subject of a future waiver request. No waiver is required
7 for any actions taken to date with respect to 1978 through
8 1981 model-year motorcycles since California's standards are
9 now identical to EPA's.

10 And that, of course, is subject to the manufacturer
11 submitting certain documentation to the ARB and to continued
12 validity of EPA's standards and test procedures.

13 When we adopted it, adopted the EPA standards for
14 our own, recently we put a provision in our procedures that,
15 should the EPA procedures be struck down subsequent to legal
16 challenge, that the California test procedures would auto-
17 matically revert back to the old procedures for which we were
18 already granted a waiver; and should EPA decide that there is
19 no particular problem in us enforcing federal standards
20 in California, we would like some recognition of our language.
21 That reason states the procedures formerly granted a waiver in
22 that decision.

23 The only item we believe to be subject to discussion
24 regarding motorcycles is the issue of California's 1982 motor-
25 cycle emission standard of 1.0 gm/km, as defined under the new
26 test procedures. In our opinion, the Administrator can only
27 reconsider his waiver allowing California to implement the one
28 gram per kilometer standard in 1982 if he finds that the change

1 from the original California test procedure to the new federal
2 test procedure impinges on lead time or technological feasi-
3 bility. However in his October 1, 1976 decision, the Administra-
4 tor indicated that he was granting California a waiver for the
5 1982 hydrocarbon standard, even though he could not find that
6 the requisite technology existed at the time of his decision,
7 because he anticipated that there was sufficient lead time to
8 develop such technology and apply it to most motorcycles.
9 We fail to see how the test procedure changes adopted by
10 California could affect that judgment.
11 The test procedures adopted by EPA differed from
12 those used by California to obtain its motorcycle emissions
13 standard waiver in the definition of useful life, test
14 vehicle requirements, provisions concerning adjustability,
15 and minor test procedure changes. The differences in useful
16 life definitions were differences in language, and have no
17 effect on the period of time manufacturers are subject to the
18 emissions control warranty. The EPA test vehicle require-
19 ments are, if anything, less stringent than the ones
20 originally adopted by ARB, and consequently this change
21 should, if anything, improve the manufacturers' abilities to
22 meet California's 1982 standard.
23 EPA's provisions concerning adjustability of
24 emissions related components should not have any impact on
25 technological feasibility, since these provisions relate
26 primarily to adjustment technology, and are quite independent
27 of the basic emissions control system.
28 Finally, the technical test procedure changes are

1 basically minor in nature, and should have no discernible
2 effect on the manufacturers' ongoing research and development
3 programs. Consequently, we believe that the Administrator
4 cannot withdraw the waiver previously granted to California
5 for the one gram per kilometer hydrocarbon standard for 1982
6 and subsequent model motorcycles.
7 I have not included a discussion of technological
8 feasibility of the one-gram standard in my prepared statement
9 for the reasons cited in the statement that we don't believe
10 that's necessarily an issue since the Administrator felt in
11 his decision of last year that it wasn't necessary to make a
12 finding of technological feasibility at this time because of
13 the amount of lead time remaining and the fact, I assume,
14 that the standard was significantly less stringent than
15 standards which already have been applied to similar types
16 of engines used in motor vehicles.
17 If, however, EPA believes it's necessary to have
18 some discussion of technological feasibility of a one-gram
19 standard in the transcript of this hearing, we would be
20 prepared to get into that to some extent, either now or
21 perhaps after we have had comments from the manufacturers.
22 CHAIRMAN JACKSON: I think it would be important to
23 provide your view with regard to that in a little more detail
24 than you have provided here, the effect of the changing
25 standards on your -- or the change in test procedures on your
26 standard and technological feasibility thereof.
27 And I don't accept your restatement of the
28 Administrator's position with regard to his finding of

1 technological feasibility, and I would refer that back -- or
2 my interpretation back to the Federal Register notice of
3 precisely what he said just for purposes of clarification,
4 because I think your restatement was just a little bit
5 different than the way the Administrator stated it in his
6 decision.
7 With regard to your request for continued submission
8 of certification documents, what is your view on a manu-
9 facturer failing to make those submissions timely to the
10 CARB?
11 MR. AUSTIN: Our view is that a manufacturer who
12 fails to make that documentation available to us should not
13 be allowed, will not be allowed to market his product in
14 the State of California.
15 CHAIRMAN JACKSON: Under what authority?
16 MR. AUSTIN: We have under the -- because of the
17 fact that we are adopting EPA's standards and procedures as
18 our own and intend to enforce those procedures, making our
19 motorcycle control program more stringent than the EPA program
20 and, therefore, allowable under 209 of the Clean Air Act as
21 an independently conducted program.
22 MR. MACOMBER: Mr. Jackson, our regulation,
23 Section 1958, also says, and I am quoting here from Subsection
24 (e) with reference to the document requirement, "The above
25 information," quoting now, "The above information shall be
26 submitted for each engine family prior to sale or offering
27 for sale of 1978 through '81 model year motorcycles in
28 California."

1 CHAIRMAN JACKSON: So it is in this context a
2 prerequisite to sale?
3 MR. MACOMBER: Yes.
4 CHAIRMAN JACKSON: And, therefore, a matter subject
5 to preemption under Section 209?
6 MR. AUSTIN: Yes.
7 MR. MACOMBER: We would have to agree with that.
8 CHAIRMAN JACKSON: Now, this situation is somewhat
9 different than what we have talked about before where we have
10 talked about compliance and inspection test procedures after
11 or following on to assembly-line test procedures as a mere
12 means of checking on what the Administrator -- what the
13 manufacturers have done pursuant to the assembly-line test
14 requirement. Here you are saying that you are going with these
15 compliance and inspection test procedures in the absence of a
16 CARB assembly-line test program; is that correct?
17 MR. AUSTIN: No, no, no. We are saying that we
18 have yet to act on the assembly-line test procedures and
19 compliance procedures for motorcycles, and we believe that
20 that will have to be the subject of a future waiver hearing.
21 CHAIRMAN JACKSON: So the basis for your request
22 for inspection, compliance testing and inspection, at least
23 compliance testing, in this context is somewhat different
24 than it is in the case of passenger cars and heavy-duty
25 trucks?
26 MR. AUSTIN: We are not here seeking a waiver for
27 compliance testing of motorcycles at this time.
28 CHAIRMAN JACKSON: That's right. You asked us to

1 put that off and consider it after you have made some sort of
2 amendment or change to the approach.
3 MR. AUSTIN: That's right. We believe that we will
4 have to -- we will have to come up with a special package for
5 motorcycles because of the fact that they are handled
6 differently, they are prepared differently. We are going to
7 have to have a fairly detailed set of regulations addressing
8 how vehicles will be prepared for tests by the Air Resources
9 Board, and we think that should be the subject of a waiver
10 hearing.
11 CHAIRMAN JACKSON: Now, will that be in the context
12 of an assembly-line test program?
13 MR. AUSTIN: We are not planning to conduct an
14 assembly-line test program for motorcycles in the 1978 model
15 year. We are planning to conduct a compliance testing
16 program alone without assembly-line testing. For that
17 reason, we believe it will probably be necessary for us to
18 seek a waiver of the compliance testing program because we
19 can't use the same approach that's been used on other motor
20 vehicles where the compliance program is little more than an
21 extension of the assembly-line program, because there won't
22 be an assembly-line program for motorcycles, at least not for
23 1978.
24 CHAIRMAN JACKSON: Do we need to make a decision on
25 the submission of the application now as opposed to after you
26 have come forward with your program for which the application
27 will be required?
28 MR. AUSTIN: I think now you have to make a

1 decision on the appropriateness of the language we have
2 adopted in Title 13 which requires the submission of certain
3 documents to us and gives us the right to -- I believe right
4 now, Kingsley -- Correct me if I am wrong -- we are also
5 seeking the right to be able to inspect vehicles which are
6 offered for sale in California to see if, in fact, they are
7 built in conformance with the certification documents which
8 we are requesting be submitted to us prior to sale.
9 We are not here seeking a waiver for any testing
10 program at this time. We are only here seeking a waiver of
11 the provisions which have been adopted in Title 13 requiring
12 submission of certain documentation to the State of California
13 and for our right to be able to inspect motorcycles sold in
14 California that were certified under the EPA procedures and
15 standards, which have also been adopted as our own.
16 CHAIRMAN JACKSON: But those procedures, those
17 inspection procedures, have not been finalized; they are not
18 before us.
19 MR. AUSTIN: We are not planning to -- We are not
20 planning to put together specific inspection procedures for
21 motorcycles. Again, we want the -- we intend to conduct
22 the inspection as we do with passenger cars and trucks. That
23 is we only intend to look at the vehicle visually to see if
24 proper part numbers are on the fuel metering system, if the
25 proper hardware is installed. Basically, we are just looking
26 for compliance with the Part 2 certification application.
27 That serves as the boundary for the inspection program.
28 CHAIRMAN JACKSON: And for what years is that?

1 MR. AUSTIN: 1978 and subsequent.
2 CHAIRMAN JACKSON: Under what authority are you going
3 to conduct the inspection testing of California law?
4 MR. MACOMBER: Well --
5 CHAIRMAN JACKSON: Just your cite, Title 13, and
6 then what?
7 MR. MACOMBER: We would adopt regulations into
8 Title 13, make appropriate amendments there, but the references
9 will be to the Health and Safety Code. Do you want those
10 specific references now? I can give them to you in a minute.
11 CHAIRMAN JACKSON: It's not under 2101 of the --
12 Section 2101 of the existing regulation?
13 MR. MACOMBER: It's conceivable we would amend that
14 section to incorporate compliance testing procedures for
15 motorcycles. We could also add another section, 2101.5. We
16 just haven't decided the mechanics of how we are going to do
17 it yet.
18 CHAIRMAN JACKSON: And you don't have -- you don't
19 believe you have, unless in the context of the -- Under what
20 authority do you believe you have the right to conduct your
21 inspection tests?
22 MR. RUBENSTEIN: 2101 of Title 13, California
23 Administrative Code. 2101(a) and (d) in particular for
24 inspection testing.
25 MR. MACOMBER: Which, in turn, is based upon a
26 provision in the Health and Safety Code which requires that
27 all production vehicles be substantially the same in con-
28 struction in all material respects as the certification

1 vehicles.

2 CHAIRMAN JACKSON: Your telegram of May 2nd, 1977,

3 asked that -- states that:

4 "This will confirm that Item 1 for the May 16th,

5 1977, waiver hearing in San Francisco entitled Compliance

6 and Inspection Testing of '77 and subsequent model year

7 motor vehicles except '77 and '78 model year gasoline

8 passenger cars and light-duty trucks should not extend to

9 compliance and inspection testing of motorcycles. We

10 intend to hold a public hearing in June, 1977, to

11 establish specific procedures for guidelines and

12 inspection testing of motorcycles. Thereafter, we will

13 apply for a waiver with respect to compliance and

14 inspection testing of motorcycles."

15 MR. AUSTIN: Okay. The problem is that in that

16 context, we were talking about compliance and inspection

17 test procedures as the package of procedures that we use

18 during the -- the Title 13 surveillance testing, the testing

19 that's conducted at the Board's laboratory. That's both

20 CVS testing in combination with a detailed review of the

21 hardware that's used on the vehicle.

22 Perhaps we didn't make ourselves clear, but we

23 believe that, when we are granted authority to or waiver of

24 federal preemption to conduct certification testing, that

25 implicit in that approval is the authority for us to inspect

26 vehicles that are sold subject to that certification or

27 approval to see if they are, in fact, similar to the certified

28 vehicles.

1 In the context of our mailgram of May 2nd, we were
2 talking about compliance and inspection testing procedures as
3 a package referring to the program which is conducted on other
4 motor vehicles at the Board's laboratory wherein we require a
5 sample to be delivered for CVS testing. And as part of that
6 program, we also conduct some inspection tests of the vehicle,
7 usually inspections which are more detailed than the general
8 type of inspections that we think we implicitly should have --
9 we implicitly receive authority for when we are granted an
10 approval to conduct a certification program.
11 CHAIRMAN JACKSON: Okay. Then with regard to your
12 inspection activity, that's all we are talking about now is
13 just the comparison of the parts and the authority for them
14 to submit to you an application for certification?
15 MR. AUSTIN: Yes.
16 CHAIRMAN JACKSON: That's a matter subject to
17 consideration for waiver to give you that authority to
18 sanction them if they don't submit to you an application?
19 That's really what we are talking about here?
20 MR. AUSTIN: Basically. Kingsley, do you agree
21 with that?
22 MR. MACOMBER: Right. I think you can separate
23 it, the issue of compliance and inspection testing.
24 CHAIRMAN JACKSON: So really all you are trying to
25 do is confirm that certified vehicles-- vehiclescertified by
26 the federal government for sale in California, indeed have
27 the parts on them in accordance with their application sub-
28 mitted to the federal government?

1 MR. AUSTIN: Yes.
2 MR. RUBENSTEIN: That's correct.
3 MR. DRACHAND: Up to 1981.
4 CHAIRMAN JACKSON: Now, how do you argue that that's
5 more stringent?
6 MR. AUSTIN: The federal government does not have a
7 program for inspecting motorcycles sold in the State of
8 California to see if they are, in fact, built in conformance
9 with the certification application. At least we are not
10 aware of any program.
11 CHAIRMAN JACKSON: But you are suggesting that by
12 itself is a stringency measure?
13 MR. MACOMBER: Yes.
14 MR. AUSTIN: Yes.
15 CHAIRMAN JACKSON: There is no argument about the
16 standards. At least until 1982, the standards are the same
17 as the federal standards; the test procedures are the same
18 as the federal test procedures; it's just an additional
19 measure which looks at, at least for right now, comparison of
20 parts --
21 MR. RUBENSTEIN: That's correct.
22 CHAIRMAN JACKSON: -- for the application?
23 MR. AUSTIN: That's correct.
24 CHAIRMAN JACKSON: Okay.
25 MR. AUSTIN: This reminds me -- gets back to a
26 question you asked earlier about whether the Board had ever
27 taken enforcement action against a manufacturer for selling
28 vehicles which were not built in conformance with the

1 certification application, and I think perhaps our answer on
2 that was inaccurate.
3 MR. RUBENSTEIN: No, we said no with respect to used
4 vehicles. The answer, I think, is probably yes with respect
5 to new vehicles. Again, it's not clear whether we ever, in
6 fact, got to court on the issue, but we have, in fact, taken
7 action and gotten to the manufacturer.
8 MR. AUSTIN: Yes, the State of California has taken
9 action against several people attempting to market vehicles in
10 the State of California which were not certified for sale in
11 the State of California; in fact, were not certified for sale
12 in the United States of America.
13 And under the sections of Title 13 we are talking
14 about here, we would have our authority to enforce the federal
15 certification requirements extended to motorcycles. And
16 that's an authority which we think has some significance. It
17 increases the effectiveness of the program because, in fact,
18 we know that without an enforcement program in this area,
19 vehicles do make their way into the state and are sold that
20 are not in compliance with the certification, with the
21 certified configurations of vehicles.
22 CHAIRMAN JACKSON: I have a question here submitted
23 by Mr. Bullwinkle.
24 MR. BULLWINKLE: That's right.
25 CHAIRMAN JACKSON: Is that correct?
26 MR. BULLWINKLE: Yes. Thank you.
27 CHAIRMAN JACKSON: Of Kawasaki Motors.
28 His question is -- It's to Mr. Austin -- isn't it

1 ARB's burden to justify the one-kilogram -- one-gram per
2 kilometer HC standard for 1982 in terms of feasibility, lead
3 time and economic reasonableness? Please do so so that the
4 manufacturers here will have something to respond to.
5 Before you respond, I might add that a waiver has
6 been granted for that standard. After deliberations in a
7 proceeding similar to this, the Administrator has made a
8 determination with regard to a one-gram per kilometer standard.
9 It's on the books. The issue here seems to be the change in
10 the test procedure that would -- that has been adopted by the
11 CARB and its effect on the technological feasibility of that
12 standard. And that's the part that I asked Mr. Austin to
13 respond to in addition to what he has presented here in his
14 statement.
15 And if you want to go beyond that, you certainly
16 can. But I think it should be narrowed to the confines of
17 the effect on the technological feasibility of that standard
18 being brought about by the change in test procedure.
19 MR. AUSTIN: Well, I think the question is
20 irrelevant to the issue as to whether the change in test
21 procedure has any impact on the feasibility of a one-gram
22 standard.
23 Further, I might add --
24 CHAIRMAN JACKSON: The point being that the change
25 in test procedures doesn't make it more stringent or less
26 stringent?
27 MR. AUSTIN: Not in our opinion. I would not
28 accept -- Further, I would not accept Mr. Bullwinkle's

1 suggestion that, in setting all standards, the agency setting
2 the standards carries the burden of proof with respect to
3 feasibility. As long as the standard is within the realm of
4 the types of controls that are capable of being applied to
5 multiple mobile sources, I believe the manufacturers carry the
6 burden with respect to the feasibility of long-range standards
7 which are necessary to protect the public health.
8 MR. MACOMBER: I would like to expand on that
9 notion just a little bit.
10 In the context of this waiver hearing, I think it
11 should be emphasized from our point of view -- And I think
12 that this is fully consistent with not only the wording of
13 the Clean Air Act, Section 209, but the legislative history --
14 and that is that California doesn't have the burden, in
15 effect, of disproving why it's entitled to a waiver. That's
16 what they seem to be suggesting.
17 As I read it, either the Administrator, through its
18 own information or through information submitted by the
19 manufacturers, must give us a waiver unless that information
20 shows that we are not entitled to one. So if there is a
21 burden on anyone, it's certainly not on California, as I think
22 was implied in the question. So I would like to emphasize
23 that.
24 I would also like to make it clear that we are
25 here to talk about the subject if EPA would like to talk about
26 it, and we are prepared to do that. If you think it's
27 important, we will.
28 CHAIRMAN JACKSON: I think it's important that you

1 supply to the record your basis for believing that the changes
2 in test procedures do not change the stringency of the 1982
3 standard.
4 MR. AUSTIN: All right. We can give you some more
5 specific comments on that issue.
6 CHAIRMAN JACKSON: I'm not sure I understand. Maybe
7 you can help me a little bit on this articulation of the way
8 you see it working with regard to the preservation of the
9 California program in the event that the federal program is
10 struck down by some court action.
11 MR. AUSTIN: Well, basically, it's our position
12 that the development programs necessary to build cleaner
13 motorcycles will be unchanged by the differences between
14 California's old test procedure and the new federal procedure
15 for motorcycles; that those procedures are very similar, and
16 that the kinds of modifications necessary for bikes to meet
17 California's old standards on California test procedures are
18 essentially the same as the modifications necessary to meet
19 EPA's standards on EPA's test procedures.
20 That being the case, we believe that we should have
21 the right to revert back to our old standards and test pro-
22 cedures in the event that the EPA procedures are struck down
23 in the courts.
24 There's already been a hearing on the issue of
25 lead time associated with building motorcycles that comply
26 with the former California test procedures and standards.
27 There was a finding made that, in fact, those standards were
28 feasible, and lead time did remain.

1 It's our contention that bikes which meet the new
2 EPA standards on the EPA procedure should also meet the old
3 California standards on the California procedure in most
4 cases. That being the case, we don't want to see the motor-
5 cycle control program collapse because of legal action that
6 we may have no control over that ends up in the federal pro-
7 cedures and standards being struck down or postponed in some
8 way.
9 CHAIRMAN JACKSON: Well, then, really what you are
10 saying, as I see it, isn't the mechanics of this thing, is
11 that you really want to keep the waiver that you have and the
12 program you have, but you are going to waive in deference to
13 the federal program.
14 MR. AUSTIN: That's right. This is something that
15 we believe we are doing in deference to manufacturers' concerns
16 and comments that have been expressed in the past, that it
17 would be burdensome on them to have to comply with two
18 separate sets of standards on two separate test procedures.
19 And we agree that the standards and procedures that EPA has
20 come up with are going to provide essentially the same
21 degree of control as California's former procedures did and,
22 therefore, there is no -- there is no problem on our part
23 with modifying our procedures to be identical to those used
24 by EPA.
25 If that's going to reduce the cost of motorcycle
26 emission control in the United States, that's exactly what we
27 would like to see. We don't believe, however, that our
28 decision to go along with the federal procedures and standards

1 should end up resulting in the loss of a motorcycle control
2 program for the State of California in 1978.
3 CHAIRMAN JACKSON: Got you. But the point is how
4 do you do that? Do you revoke the waiver presently in
5 existence and carve out some sort of mechanism by which you
6 can recognize its existence in the event that the federal
7 program is halted by legal challenge, or do you leave in
8 effect the waiver and let California move on its own to
9 modify its program in such a way as to accommodate the
10 manufacturers?
11 MR. MACOMBER: If you are looking for an explanation
12 as to how we would characterize what we are asking for, I
13 would say we are asking for a conditional revocation or
14 modification of our existing waiver.
15 CHAIRMAN JACKSON: Do you see a difference between
16 a conditional revocation and modification?
17 MR. MACOMBER: Not essentially, no. I think you
18 could use either term.
19 CHAIRMAN JACKSON: I think I do.
20 MR. MACOMBER: I would say that, if you have
21 questions about whether or not the term "revocation" would be
22 consistent with what we are intending to do, then perhaps the
23 term "modification" would be more appropriate.
24 MR. AUSTIN: Mr. Jackson, I'm giving some further
25 thought to your question about the difference between con-
26 ditional revocation and modification. I think they are
27 probably -- you probably could argue that there is a
28 significant difference in those two actions. I think that

1 we prefer to see a modification of our existing waiver rather
2 than any kind of revocation conditioned, as it might be, or
3 that the lead time clock continuing to run in an uninterrupted
4 fashion between now and the date for compliance being required
5 on 1978 motorcycles.
6 CHAIRMAN JACKSON: We are certainly not talking
7 about total revocation because we still haven't placed the
8 1982 one-gram per kilometer standard which is more stringent
9 than anything on the federal books.
10 MR. MACOMBER: That's correct.
11 CHAIRMAN JACKSON: Thank you, Mr. Austin.
12 We will adjourn the hearing until 1:45.
13 (Noon recess.)
14 CHAIRMAN JACKSON: Gentlemen, if you are ready, I
15 think we are ready to start up here.
16 MR. JOSEPH R. AUSTIN: Thank you.
17 My name is Joseph R. Austin. I am counsel in this
18 matter to Harley-Davidson Motor Company, Inc., a motorcycle
19 manufacturing subsidiary of AMF Incorporated. With me at
20 the witness table is Mr. Laimonis T. Embrekts, Director,
21 Environmental Control and Energy Resources Planning, AMF
22 Incorporated.
23 Harley-Davidson, in numerous appearances before both
24 the United States Environmental Protection Agency and the
25 California Air Resrouces Board has consistently supported
26 reasonable regulation of emissions from motorcycles. That
27 support is reaffirmed here. Harley-Davidson does not, however,
28 support the duplicative motorcycle emission control regulation
for California now advocated by CARB. Given the stringent

1 motorcycle emissions regulations promulgated by the EPA, there
2 is no longer any legal or practical justification for inde-
3 pendent CARB regulation.
4 Mr. Gray, on May 1st, as required by the notice, we
5 submitted a letter outlining the position of Harley-Davidson
6 in some detail. Subsequently to that, we were advised by EPA
7 that that letter which addressed itself to the CARB regula-
8 tions as amended on March 24, 1977, were not at issue at this
9 hearing. So Harley-Davidson revised its statement applicable
10 to the regulations which were in effect on October 1st, 1976,
11 when the original waiver was granted, and that's the statement
12 which has been distributed to you today.
13 I call this to your attention for two reasons:
14 1. By reason of the confusion of what the notice
15 wanted Harley-Davidson to direct itself to, it may be that we
16 still have not touched on what you are really trying to decide
17 today.
18 But, secondly, I wanted to urge that there be
19 received in evidence at this hearing both the May 1st letter
20 from Harley-Davidson and the statement which we have provided
21 today. Each is different, and each is directed to a different
22 subject, apparently both of which were required by the notice.
23 I don't intend to read either of the statements, but
24 only to make a few comments and then to have primarily Mr.
25 Embrekts available to answer questions.
26 The first comment I would like to make is some-
27 thing that we perceive as having been an erroneous assumption
28 during this morning's hearings, and that is that there is no

1 need to decide anew whether a waiver should be granted for
2 1982 standards. The reason being suggested this morning was
3 that that waiver decision had already been made on that 1982
4 standard.
5 We would like to call to your attention that the
6 1982 standard for which the waiver was originally granted was
7 a standard which was based on a year-of-production criteria.
8 On March 24th, 1977, the California Air Resources Board
9 amended that 1982 standard to make the criteria model-year
10 criteria.
11 Harley-Davidson has a model year which begins in
12 July preceding the calendar year of that model year. In other
13 words, the new California 1982 standard affects Harley-
14 Davidson as of July, 1981. In other words, it's a six-months'
15 shorter period of time. That is a substantial amendment as
16 far as Harley-Davidson is concerned to the 1982 standard that
17 was originally granted a waiver, and Harley-Davidson believes
18 that this significant amendment requires a new decision as to
19 whether or not a waiver will be granted for the 1982 standard.
20 Now, it seems to us that whether or not -- Whether
21 the decision before you is to continue in effect the October 1,
22 1976, standard for the standards and test procedures in
23 effect on October 1, 1976, or whether it's to grant a new
24 waiver for the standards adopted on March 24, 1977, the
25 question is basically the same for model years 1978 through
26 '81.
27 For the 1978-79 model year, the prior CARB regula-
28 tions would have resulted, by Harley-Davidson's calculations,

1 in a 46% lower control of hydrocarbon emissions. As amended,
2 the standards are the same as EPA's.
3 For model years 1980-81, both before and after the
4 amendments, the standards of five grams per kilometer were the
5 same. Also for those model years, California does not purport
6 to regulate anything other than hydrocarbons whereas EPA has
7 an overall regulatory scheme which regulates both carbon
8 monoxide and crank case emissions.
9 For 1978-79 model years, California regulated only
10 two-stroke motorcycles, whereas EPA regulated four-stroke
11 motorcycles.
12 In the 1982 model year, the standard has been
13 consistently one gram of hydrocarbon per kilometer. It was
14 Harley-Davidson's testimony that that was not technologically
15 feasible nor cost-effective, and now that it's been amended to
16 reduce the lead time by six months, that problem is even more
17 difficult for Harley-Davidson.
18 What the real question, I submit, before you today
19 is whether Section 209 intended for the California Air
20 Resources Board to enforce regulations which were not more
21 stringent than those which had been adopted by the EPA.
22 For model years 1978 to 1981, the only real issue
23 here is whether California can maintain enforcement provisions
24 when it does not have a more stringent standard. It's the
25 position of Harley-Davidson that Section 209(a) which says
26 that no state can impose any impediment to the marketing of
27 new motorcycles applies to each model year and that, therefore,
28 if the California Air Resources Board is to impose any

1 impediment to the sale of new motorcycles in California in
2 1978, there must be a finding along the lines required by
3 Section 209(b) of the Act, and that is a finding that
4 California's standards are more stringent and that they are
5 mandated by extraordinary and compelling circumstances.
6 It's our position that Section 209 was never
7 intended merely to have dual enforcement of a common regula-
8 tion. It was intended to allow California, where necessary,
9 to adopt a more stringent standard.
10 It's Harley-Davidson's position further that, for
11 model years 1978 to 1981, there can be no waiver under
12 Section 209(b) and, therefore, there can be no requirement of
13 enforcement procedures or of their filing of certification
14 documents with the California Air Resources Board.
15 For 1982, the question is whether it's premature
16 now to grant a waiver for a standard that doesn't become
17 effective until 1982 and whether the 1982 standard is
18 technologically feasible.
19 Now, we agree with CARB, I believe, that at the
20 time of the October 1, 1976, waiver decision, the Administrator
21 said that he couldn't determine whether it was feasible or
22 not. But we submit that in the process that led up to the
23 promulgation of the EPA standard in December of 1976, that
24 the Administrator, in fact, found that a two-gram hydrocarbon
25 standard was feasible until 1983 and that it was also not
26 cost-effective. That decision, made in connection with the
27 promulgation of the EPA standards, has to affect the
28 California standard, and there has to be a new finding if --

1 that, in fact, the one-gram per kilometer hydrocarbon standard
2 proposed by California is technologically feasible with the
3 lead time of the model year definition now adopted by
4 California.
5 Other than the change in the model year from
6 production year to model year definition, we agree with the
7 California Air Resources Board that the test procedures
8 originally promulgated by California, which were based on
9 EPA procedures, and the current ones are not of such signifi-
10 cant difference that that will affect materially the stringency
11 of the regulations.
12 Finally, in our May 1st letter, we requested to be
13 heard on May 19th, and I wish to advise you that neither
14 Mr. Embrekts nor myself will be able to be here on May 19th,
15 and we would like only our written submission to be taken as
16 evidence at that time.
17 We are ready to respond to any questions you may
18 have.
19 CHAIRMAN JACKSON: You conclude that the changeover
20 to the federal test procedure by California does not materially
21 affect the stringency of the 1982 standard, but that the
22 adoption of the federal rules which embody a model year
23 concept different from that which California had in their
24 rules has imposed a different time constraint on Harley-
25 Davidson, resulting in a lead time problem with the 1982
26 standards; is that correct?
27 MR. AUSTIN: Yes.
28 CHAIRMAN JACKSON: Now, does that mean that

1 Harley-Davidson has got built into its model year production
2 scheduling some intractable, inflexible precondition that can't
3 be changed?
4 MR. AUSTIN: I'm not sure.
5 CHAIRMAN JACKSON: I mean there is nobody that says
6 you got to get into it until you have to, get into that model
7 year until you have to.
8 MR. AUSTIN: Well, if you are suggesting that
9 Harley-Davidson could change its model year designation from
10 July to January, it does have real financial problems with
11 that because it's built into the company-union contracts that
12 the plant closes down in the Summertime for model-year
13 changeover, and it's not something that they can just reverse.
14 In other words, currently they are financially and
15 contractually committed to the July model-year changeover
16 date.
17 MR. EMBREKTS: Yes.
18 CHAIRMAN JACKSON: And I'm not sure how this change,
19 in going with the federal definition of model year versus the
20 California model year, is involved in that kind of a problem.
21 MR. AUSTIN: Well --
22 CHAIRMAN JACKSON: Can you explain that a little
23 more?
24 MR. AUSTIN: Well, the testimony of Harley-Davidson
25 a little earlier was that, by January 1, 1982, it was
26 technologically infeasible to comply with a one-gram per
27 kilometer hydrocarbon standard. The effect of the amendment
28 by the California Air Resources Board is to tell

1 Harley-Davidson that they have to comply with the one-gram
2 hydrocarbon per kilometer standard as of July of 1981, which
3 means they have to comply six months earlier.
4 CHAIRMAN JACKSON: So it's obvious the decision was
5 made on testimony by Harley-Davidson anyhow, so its relevance
6 is at best marginal.
7 MR. AUSTIN: I'm not sure that I follow that, the
8 testimony --
9 CHAIRMAN JACKSON: Well, you said you could not do
10 it anyhow under any circumstances, right? So what difference
11 does it make if it's moved up six months?
12 MR. AUSTIN: Well, it makes it --
13 CHAIRMAN JACKSON: Why should we revise it? The
14 issue --
15 MR. AUSTIN: Well, the reason you should revise it
16 is it's required by law.
17 CHAIRMAN JACKSON: If you follow --
18 MR. AUSTIN: Whether or not you should give any
19 favorable consideration to the fact that Harley-Davidson has
20 six months less time to try to comply is a matter of your
21 discretion, I imagine.
22 CHAIRMAN JACKSON: But that wasn't relevant the
23 first time around by your own admission.
24 MR. AUSTIN: The issue was decided adversely to the
25 testimony of Harley-Davidson.
26 CHAIRMAN JACKSON: Correct.
27 MR. AUSTIN: And I am not saying that you can't
28 decide it adversely to the position of Harley-Davidson again.

1 CHAIRMAN JACKSON: It's just more adverse now?
2 MR. AUSTIN: It's aggravated by the fact that you
3 have six months less time to do it. But I'm not saying as a
4 matter of law you can't say we have already decided the 1982
5 issue and we don't have to decide it again. I'm saying you
6 do have to decide it again because they materially changed the
7 ground rules.
8 CHAIRMAN JACKSON: In some way that Harley-Davidson
9 cannot effect any change to get themselves back? In other
10 words, it's something that Harley-Davidson does in the normal
11 course of business that keeps them from -- keeps them from
12 doing what's required by the new regs as opposed to something
13 that's happened with regard to technology or something of
14 that nature?
15 MR. AUSTIN: Harley-Davidson is trying to develop the
16 technology. It has six months less time to do it within.
17 CHAIRMAN JACKSON: But that's of your own choosing.
18 These six months, there's nothing that says you have to have
19 it six months earlier, no requirement that says bikes on the
20 road have got to be meeting the standard, I mean the six months
21 earlier timeframe, is it?
22 MR. AUSTIN: Yes, it is. The law used to say that
23 as, you know, bikes manufactured after January 1, 1982, have
24 to meet certain standards. The law now says that, you know,
25 bicycles manufactured in a certain model year have to meet
26 those standards.
27 CHAIRMAN JACKSON: And you can define your model
28 year the way you want to?

1 MR. AUSTIN: Yes.
2 CHAIRMAN JACKSON: Right. So it's up to you.
3 MR. AUSTIN: Well, it's up to us in the absolute
4 sense. It's beyond our control in the practical sense.
5 CHAIRMAN JACKSON: Now, let's get down to why it's
6 beyond your control in the practical sense.
7 In the normal course of business, it may be difficult.
8 That's the point you have been making; is that correct?
9 MR. AUSTIN: Yes.
10 CHAIRMAN JACKSON: In the normal course of business --
11 MR. AUSTIN: Yes.
12 CHAIRMAN JACKSON: -- why is it impractical to do?
13 Why is it you can't do it?
14 MR. AUSTIN: You mean technologically or --
15 CHAIRMAN JACKSON: I don't think the technological
16 issue is involved. You decided that it was some business
17 about union contracts or something like that that made it
18 difficult.
19 MR. EMBREKTS: No, no. What we said is that the
20 model year definition is the way we conduct business. But
21 the fact that we cannot comply with the standard is certainly
22 not influenced by that.
23 In other words, we say we didn't see a way to comply
24 with it by January 1, 1982, and this makes it almost certain.
25 It's a different standard is the way we see it, much different
26 from what it used to be.
27 CHAIRMAN JACKSON: Because?
28 MR. EMBREKTS: Because of a minimum of six months

1 taken out of complying with the standard. We are talking
2 an entirely new level of technology at these levels. These
3 are the so-called technology levels. It was proposed as a
4 goal by the Board itself. The Board itself, when it adopted
5 the standards, recognized the fact that they had nothing to go
6 on, but it was a goal that they thought could be achieved and
7 they would reconsider it again.
8 But this makes it less probable, much less probable.
9 CHAIRMAN JACKSON: Because of your unwillingness to
10 redefine your model year --
11 MR. EMBREKTS: No.
12 CHAIRMAN JACKSON: -- to correspond --
13 MR. EMBREKTS: No.
14 CHAIRMAN JACKSON: -- with the January 1 date?
15 MR. EMBREKTS: Let's look at the opposite of that.
16 I guess you say we are at liberty to define a model year.
17 It seems to me that, using that rationale, we could just
18 continue with the '79 model year ad infinitum.
19 CHAIRMAN JACKSON: You continue on until January 1 --
20 MR. EMBREKTS: Not anymore.
21 CHAIRMAN JACKSON: -- 1980?
22 MR. EMBREKTS: No. It's a model year '82 now
23 standard.
24 MR. AUSTIN: But it has a limitation that, in any
25 event, after January 1, '82, you have to switch around.
26 MR. GRAY: Maybe a little easier way of getting at
27 the question is why could you not begin your 1982 model year
28 January 1, 1982? Why is that impossible?

1 MR. AUSTIN: I think I answered that in terms of
2 absolutes, that's not impossible; but as a practical way of
3 the manner in which Harley-Davidson has traditionally done
4 business, as have all, you know, of the American automobile
5 manufacturers, the model year changeover is in the Summertime,
6 and they are committed to that legally as a matter of con-
7 tractual obligations to their employees as well as, you know,
8 physically in terms of the expense of retooling and things.
9 You know, they would incur that twice in one year, or just
10 forego a model change for a whole year in order to avoid the
11 expense of it.
12 So, in an absolute sense, yes, they could change
13 their way of doing business. But as a practical matter, you
14 have not required the automobile manufacturers to do that.
15 You know, why should the only American manufacturer of motor-
16 cycles be required to do it?
17 CHAIRMAN JACKSON: We didn't require them to, nor
18 did we prohibit them from doing it. Some manufacturers have
19 built later than normal for their own convenience. It's
20 their election. Whenever you start that depends upon how
21 one defines your model year, and that's entirely up to you.
22 MR. EMBREKTS: Well, it may not be a matter of
23 convenience at all. Just because you are -- you have always
24 conducted your business that way, in other words, you gear up
25 your production for the next year's sales and you stock at
26 your dealers, you stock the warehouses, you have your
27 production going in anticipation of the sales, and I don't
28 think it's a matter of convenience.

1 CHAIRMAN JACKSON: Well, it's really not something
2 that we say you have got to start your model year in June or
3 July of the calendar year preceding that model year. There
4 is nothing that says that. It's tied to when you start
5 producing '82 model year vehicles, motorcycles.
6 MR. EMBREKTS: That's correct.
7 CHAIRMAN JACKSON: And you can do that anytime you
8 want.
9 MR. EMBREKTS: That's correct.
10 MR. GRAY: With regard to the 1982 standard, is it
11 your only concern relative to stringency, the shortening of
12 the lead time, from your perspective, from a practical
13 standpoint, of six months? Is that the only technical
14 feasibility issue in your mind?
15 MR. AUSTIN: No. It's our belief that that
16 aggravates an already-existing problem, and we believe the
17 Administrator of the Environmental Protection Agency concurred
18 in that when he found that a two-gram per kilometer standard
19 wasn't technologically feasible before 1983.
20 But certainly when you -- you know, when you are
21 breaking your back to achieve a standard that you don't think
22 you can achieve, when you say you have to do it six months
23 more quickly, that aggravates the problem.
24 MR. GRAY: But is that the only problem that you
25 are concerned about relative to the 1982 standard regarding
26 technological feasibility?
27 MR. EMBREKTS: Well, the problem is much different
28 than it normally comes up. In the case of motorcycle

1 manufacturers, it is asked that we deal with three levels of
2 control simultaneously, three different levels of control.
3 It's asked that we today deal not only with the imminent
4 phase-in controls, but that we somehow also cope with the
5 ultimate levels at the same time, whereas just coping with the
6 imminent standards that we are about to certify to is a very
7 big task for a small company such as ours. We have no staff
8 that we can divert, you know, for different purposes. We
9 have the staff working on everything all the time.
10 And right now, we have to stay in business in '78
11 so that we will be around in '82 to attempt to deal with that.
12 Now, as we progress to that date, we have not yet
13 come upon anything on our existing designs that would lead us
14 to conclude that we may be able to achieve it with what we now
15 know. It probably requires a much different technology than
16 what we are looking at. But we still have to get past
17 January 1 of '79 -- I mean '78, because then the burden, you
18 know, lifts somewhat, and then we can really concentrate on
19 the next phase.
20 This is a much different perspective than other
21 manufacturers have had in this area. They were able to deal
22 with the standards one at a time. They were able to plan
23 out. So in our case, particularly in a smaller company's
24 case, it's much, much more difficult, and the technical
25 feasibility is a much more complicated question.
26 CHAIRMAN JACKSON: In your statement just then,
27 you said you have got to get by January 1, '78 --
28 MR. EMBREKTS: Yes.

1 CHAIRMAN JACKSON: -- before you even worry about
2 June. Does that mean for that particular model year you are
3 worried about --
4 MR. EMBREKTS: Pardon?
5 CHAIRMAN JACKSON: -- meeting the standards, that
6 you are going to introduce your models on January 1, '78, for
7 the '79 model year?
8 MR. EMBREKTS: No.
9 MR. AUSTIN: Well, the first year that the regulations
10 take effect is for motorcycles manufactured after December 31,
11 1977, so that model year isn't relevant until after the first
12 year of the -- In other words, what we will do on January 1,
13 '78, we will comply for the '78 model year. But in July of
14 '78, we will comply for the '79 model year, so that we, within
15 a six-month period, will have two certifications.
16 MR. EMBREKTS: Two model years. We would be
17 discussing two model years within six months. And that's a
18 unique feature of the motorcycle regulation.
19 MR. GRAY: Perhaps there is some confusion. December
20 of '77, you will be producing one bike; January, '78, you will
21 be producing a different bike?
22 MR. EMBREKTS: We are required to, as the regulation
23 presently stands, whether we like it or not.
24 MR. AUSTIN: I think the confusion, I might have
25 added to it. What I am saying is, for the first year of
26 regulation, that is '78, you don't have to be concerned about
27 the model year. In other words, we will start manufacturing
28 model year '78 motorcycles shortly. But they do not have to

1 comply with the regulations until January 1 of '78, so that
2 the '78 model year isn't relevant. It's just the January 1,
3 '78, date that's relevant for compliance for the '78 standards.
4 But for '79, it then becomes relevant when your model year
5 is, and our model year is in July, so that we -- you know, we
6 hit two model -- in effect, two certification stages in the
7 same year.
8 MR. GRAY: But it's not a problem of changing
9 technology in midstream because, for '78, you will be producing
10 one bike configuration in December of '77, and change to a
11 different configuration in January of '78? Is that clear?
12 In other words, will you start producing model year 1978
13 motorcycles in the Summer of '77?
14 MR. AUSTIN: Yes. But they don't have to comply
15 until January of '78.
16 MR. GRAY: And yet midyear in that production,
17 change of configuration model year 1978 motorcycle, so that
18 it will meet the '78 standards, I mean?
19 MR. EMBREKTS: You have to examine what does it take
20 to meet those standards in terms of the '78 model year. We
21 are still talking sort of add-on categories of devices, which
22 does not have a big implication on your basic design or your
23 basic tooling. However, at ultimate levels, we see a
24 fundamental redesign of engines as we make them. In other
25 words, we would -- whereas you could say you have an uncon-
26 trolled vehicle, and with add-on control, you make it a
27 complying vehicle at the initial phase, provided you pass
28 certification and the other tests.

1 At the ultimate control levels, that is not the
2 situation anymore. We are now going back to the root source,
3 and we have to redesign from ground up.
4 MR. GRAY: So you are saying --
5 MR. EMBREKTS: It's an entirely different proposition.
6 MR. GRAY: You are saying that for the 1978 standards,
7 the answer is yes; but that for the more stringent standard,
8 you could not carry the same basic design from one year to the
9 next with the transition of the more stringent standards?
10 MR. EMBREKTS: Yes.
11 MR. GRAY: The only technical possibility would be
12 to begin the model year production later than is normal?
13 Independent of the issue of practicality, the only technical --
14 technically possible method is to do that?
15 MR. AUSTIN: I think the answer is yes, assuming
16 that we have got the technology developed by January 1, 1982.
17 MR. GRAY: Okay. In pursuing the question I asked
18 earlier about other possible technical issues that you might
19 have with respect to this waiver regarding the 1982 standard,
20 perhaps I can phrase my concern a little more specifically.
21 Do you see any problem in meeting a 12-gram CO
22 standard in '82 if you have achieved the one-gram HC standard?
23 MR. EMBREKTS: Probably not.
24 MR. GRAY: Okay.
25 MR. EMBREKTS: At that point, I think the HC standard
26 is more stringent for our -- for our bread and butter type
27 motorcycle.
28 MR. GRAY: Okay. I want to go back and ask a

1 general question relative to the 1978 through '80 standards
2 prior to the '82 standard. I didn't get a very specific
3 indication in listening to your testimony as to whether or not
4 you were supporting the waiver request or not for those model
5 years.
6 MR. AUSTIN: Our specific position is that the
7 California standards are either less stringent or the same as
8 the EPA standards. The law requires that, to justify a waiver,
9 California have a more stringent standard. Therefore, it's
10 our feeling that the October 1, 1976, waiver has to be revoked
11 for the standards that were in effect on October 1, 1976,
12 and that a new waiver cannot be granted for model years 1978
13 through 1981 for the standards as amended on March 24th, 1977,
14 by CARB.
15 MR. GRAY: Okay. As you well know, there are a lot
16 of technicalities that might make that issue more complicated
17 than you just summarized it if we really got into the issue of
18 whether or not the existing California standards and test
19 procedures are more stringent or less stringent than the
20 federal standards. But since California took the initiative
21 and asked the Environmental Protection Agency to essentially
22 rescind that waiver and let them adopt federal standards, do
23 you support that request of the CARB?
24 MR. EMBREKTS: No.
25 MR. AUSTIN: Let me answer two things.
26 1. Maybe there is some confusion about what we
27 mean by test procedures. But it was the California Air
28 Resources Board's testimony, in which we concur, that the

1 test procedures originally adopted by CARB and those adopted by
2 EPA are substantially identical and that, if anything, the
3 former CARB procedures might be slightly more stringent.
4 If you mean by test procedures, enforcement proced-
5 ures, that is compliance testing, which in the past CARB has
6 argued made their standards more stringent, you know, CARB has
7 specifically asked that that not be considered today because
8 they haven't adopted any enforcement procedures for motorcycles,
9 and that won't be done until June, so it seems to me that the
10 test procedures can't be thought to be more stringent. I mean
11 that can't be a hook on which they could hang their hat.
12 To answer the second part of your question, no, we
13 don't support duplicate enforcement by California.
14 MR. GRAY: Well, I guess the test procedures do
15 define in part the stringency of the standard.
16 MR. AUSTIN: Yes.
17 MR. GRAY: The California test procedures now are
18 different than the federal test procedures. The issue of
19 whether that difference makes them less stringent or more
20 stringent is not clear on its face. So for that reason, I
21 wanted to see if I could direct the question more specifically
22 and say relative to the requests that California made of the
23 Administrator of EPA regarding dealing with the pre-1982
24 standards and test procedures, do you support that California
25 request and, if not, specifically why not?
26 MR. AUSTIN: Okay. My understanding -- And maybe
27 this is where we are not communicating. It is my understand-
28 ing that CARB has asked EPA to revoke the waiver granted on

1 October 1st, 1976, because they have changed the rules. If
2 that's their request, we concur in that one.
3 I understand that they have asked, or are about to
4 ask, that CARB grant them a new -- I mean that EPA grant them
5 a new waiver so that they can enforce EPA standards and test
6 procedures separately in California. We do not concur in
7 that request.
8 MR. GRAY: But in the former, you do concur?
9 MR. AUSTIN: Yes. That the original waiver should
10 be revoked, we agree with that.
11 MR. GRAY: According to the provisions of the
12 requests made of CARB --
13 MR. AUSTIN: No.
14 MR. GRAY: -- which basically says that that is the
15 request subject to no changes to the federal procedure, I
16 think is the basic qualification.
17 MR. AUSTIN: Yes. As I understand the test procedure
18 adopted by, or certification procedure adopted by CARB on
19 March 24th, if for some reason that certification procedure
20 were found invalid, then they would revert to their prior
21 procedure. We are opposed to that on basically due-process
22 grounds.
23 And let me define that somewhat if I can.
24 As far as I know, the only challenge made to the
25 EPA test procedures relates to the definition of "useful life;"
26 that the same definition was utilized by CARB in its prior
27 regulations. If the EPA test procedures were found to be
28 invalid because the useful life definition wasn't in accordance

1 with what was required by law, then you would automatically
2 revert to the CARB test procedures which used the same
3 "useful life" definition, and the motorcycle manufacturers
4 would have to be foreclosed from ever having an opportunity to
5 challenge those regulations because they didn't exist until
6 such time as the EPA's didn't exist.
7 So you have sort of a springing -- in real property
8 terms, kind of a springing use. In other words, you have no
9 procedure, and all of a sudden, it springs up and affects you
10 without any opportunity to be heard with respect to it and
11 without any opportunity to find out whether they are really
12 valid regulations.
13 MR. GRAY: Then, in essence, what you are saying is
14 that you feel that the earlier waiver should be revoked on
15 the basis that the federal standards, the pre-1982 standards,
16 are less stringent than the federal standards?
17 MR. AUSTIN: No. We feel that they should be
18 revoked because the California standards are not more stringent
19 than EPA's, and we believe that's the statutory requirement.
20 MR. GRAY: You believe that, for example, the ten-
21 gram per mile HC standard in 1982 is -- for large two-stroke
22 bikes is not more stringent than 14, I think it is, that the
23 federal standard allows for the large bikes?
24 MR. AUSTIN: Well, that's the '78 standard. If you
25 look at Table I, which is the table which was submitted with
26 our testimony, it shows the calculation of Harley-Davidson,
27 which shows overall there would be a 46% less reduction in
28 hydrocarbons if you use the CARB standards than if you use the

1 EPA standards.

2 Now, you could go by motorcycle-by-motorcycle and
3 pick out some where CARB's were more stringent and some where
4 EPA's is more stringent. But I don't think that's the -- you
5 know, the regulation wasn't adopted on a motorcycle-by-motor-
6 cycle basis, nor was the waiver granted on that basis.

7 MR. GRAY: What about with regards to the durability
8 testing? Do you feel that the so-called half-life testing
9 required by the federal regulations is not more stringent than
10 the requirement for full-life testing by the CARB?

11 MR. EMBREKTS: Excuse me. As a matter of fact, at
12 the present time, that's an option; it's not a requirement.

13 In other words, if you somehow can show that, by
14 testing up to that point, you can project that you would meet
15 the standards, only then you would be allowed to stop the test
16 and say you have demonstrated the capability of doing that.
17 But I think, as you will go on later, that this may or may not
18 become cut off at that half point. And, indeed, the federal
19 test procedure envisions the entire test to be conducted until
20 such a time where, at the so-called final distance, you have
21 demonstrated by actual testing that you have met the standards.

22 So it's not really a requirement; it's an option
23 provided you can meet certain criteria.

24 In that sense, both test procedures are the same,
25 except with this attached option that the federal procedure
26 carries, which shows if it can be demonstrated beyond a
27 reasonable doubt, that the other half of the test will
28 demonstrate nothing to oppose the conclusion arrived at from

1 the previous half, then you stop, and it's been certified.
2 And I think it's an option that was not considered by CARB
3 because traditionally their test procedures have been one or
4 two revisions behind the federal test procedures.
5 As a matter of fact, the CARB test procedure was
6 designed to be identical, was intended to be identical, a mirror
7 image of the federal test procedure, because they did not want
8 to put themselves in a position of rewriting EPA test pro-
9 cedures. They said so repeatedly on the record, and they
10 said they would never entertain any questions on that subject
11 because they wanted not to be in a position to rewrite EPA --
12 what they considered EPA's test procedure.
13 CHAIRMAN JACKSON: I have two questions here,
14 gentlemen, from the CARB to Harley-Davidson.
15 One is, based on your statement, the second paragraph,
16 Page 7, I believe, that EPA and the CARB test procedures are
17 virtually identical, and we presume that the change in test
18 procedures does not have a significant impact on Harley-
19 Davidson's ability to meet the 1.0 grams per kilometer
20 standard.
21 MR. AUSTIN: What we said in our testimony was that
22 the two test procedures were intended to be the same. CARB's
23 got set in place prior to the time that EPA made certain
24 additional amendments. And that since they were slightly
25 different, you would have to have a period of time and
26 experience with both test procedures before you could make a
27 determination that one was more stringent than the other. And
28 we feel the burden is on the Administrator to decide

1 affirmatively that one test procedure is more stringent than
2 the other one. We haven't had any experience with the test
3 procedures, either, enough to form an absolute opinion that
4 it's easier to meet the 1982 standard with one procedure or
5 the other procedure.
6 Now, to the extent that, you know, the concept of
7 production year that's written into the procedures as well as
8 the standards, then it's going to be harder to comply with the
9 CARB procedures because that gives us less time to do it in.
10 But, other than that, as Mr. Embrekts has said and
11 as I have said, we don't think that anybody's had enough
12 experience actually working through these test procedures to
13 form an opinion that one is going to be more stringent than
14 the other.
15 MR. EMBREKTS: Excuse me. You see, relating to test
16 procedures, it's a document, really a forecasting document,
17 on which you need statistical data to find out what effective-
18 ness did it have on what you attempt to do, and you need
19 historical data to reach any conclusion, whereas in the case
20 of standards, you know at the moment you adopt them which of
21 the two would be more stringent.
22 In terms of test procedures, let's assume now that
23 both result in meeting the standard, what would be the
24 conclusion? Would you count the number of pages? So I think
25 what you have to look at, if both result, even though written
26 perhaps differently, in achieving the standard, then you really
27 have no conclusion on that point.
28 So I think you need some historical background, some

statistical data, that shows under this set of circumstances you have an indication like this, and under another set of circumstances, you have a slightly different set of conclusions, and then you compare the two.

But you need time to draw that conclusion. No one has any experience with it right now. We don't; EPA doesn't, nor does CARB. I think we will all know a few years from now.

CHAIRMAN JACKSON: Can you say, then, what specific changes to the test procedures significantly affect your ability to meet the one-gram per kilometer standard?

MR. AUSTIN: I think that's the same question asked another way, and maybe I can answer it another way.

Just reading the test procedures doesn't tell you. There is nothing in any one particular sentence in the test procedure that will tell you a yes-or-no answer to that question. And merely changing one sentence here or there probably won't affect it. They both have for the goal, for a common goal, the meeting of the standards. Whether one achieves the goal and the other one doesn't, you don't know.

CHAIRMAN JACKSON: Another question from the CARB is: is it your opinion that the technology used to achieve a one-gram per kilometer standard will result in compliance with the federal 12-gram per kilometer carbon dioxide standard without any additional hardware or change in design?

MR. AUSTIN: I don't know if that was asked before you had an opportunity to ask your question. Seemed to me that had already been answered.

1 CHAIRMAN JACKSON: Maybe it had. I was out of the
2 room for a minute.
3 MR. AUSTIN: Yes.
4 MR. EMBREKTS: The response to that was we considered
5 the one-gram hydrocarbon standard to be more stringent, but
6 we now are really, under the present circumstances, regulated
7 by two agencies simultaneously.
8 For instance, if you consider the waiver, the
9 October 1 waiver, we essentially -- we could market unregulated
10 motorcycles in the state because it -- and these would be our
11 four-stroke motorcycles, whereas we would have to have con-
12 trolled motorcycles to meet the carbon monoxide standard.
13 So in one case we are talking about an unregulated
14 motorcycle marketed in the states as of, say, manufactured
15 after January 1, '78, and in the other case, a regulated
16 motorcycle with controlled hardware.
17 As an example, the EPA zero conformity, in the
18 instance of the four-stroke motorcycle would entirely relate
19 to hardware in achieving carbon monoxide control. So if the
20 state wanted to inspect whether or not the hardware that was
21 specified on the certificate exists on the marketed motorcycles,
22 it would be relating to an entirely different matter, one for
23 which they don't even have a standard.
24 MR. AUSTIN: In part, the answer is that, you know,
25 the standards measure what comes out the tail pipe. But that
26 in developing an engine that meets those standards, you don't
27 necessarily put on one piece of equipment and say this piece of
28 equipment relates entirely to hydrocarbons and this one relates

1 entirely to carbon monoxide. You try and develop an engine
2 that burns in such a fashion that you meet both standards.
3 And so it's hard -- it's hard, you know, the question
4 sort of asks you to play off carbon monoxide against hydro-
5 carbons. It's got to be a merger of the two technologies to
6 achieve an engine that doesn't produce either one, and it's
7 hard to answer that, you know, by adding something that reduces
8 hydrocarbons or that's going to increase carbon monoxide.
9 It can't, and vice versa.
10 CHAIRMAN JACKSON: Is it fair to say that you don't
11 know? Is that your answer?
12 MR. EMBREKTS: I beg your pardon?
13 CHAIRMAN JACKSON: Is it fair to say that you don't
14 know?
15 MR. GRAY: I believe you said a minute ago, as far as
16 you know, you thought the one-gram HC per kilometer level,
17 HC control is limiting and not a 12-gram CO standard.
18 MR. EMBREKTS: Of the two --
19 MR. GRAY: That's what I understood you to say
20 earlier.
21 MR. EMBREKTS: At the present time, based on the
22 knowledge that we have today within the confines of, say, our
23 own organization, and there may exist conflicting evidence to
24 that, but within --
25 MR. GRAY: Yes. Based on what you know at the
26 present time.
27 MR. EMBREKTS: Because that is the second level of
28 the federal standard.

1 MR. GRAY: Right.

2 MR. EMBREKTS: And we don't see the fundamental
3 implications to our design such as a new engine, radical design,
4 which essentially is the lead time constraint. It's not the --
5 Once we depart from the add-on type technologies, we depart
6 into lead time as a real constraint. You know, talking engine
7 fundamental blocks, huge blocks of design time.

8 CHAIRMAN JACKSON: With regard to the question
9 submitted by CARB in terms of the stringency of the standard in
10 terms of the change in the test procedures, CARB has asked
11 again whether your answer was yes or no to that question. The
12 reason they are doing that is because, when this testimony
13 first started, I asked the question that you are not really
14 concerned about the change in test procedures being making
15 this the '82 standard more stringent; all you are really
16 concerned about is the model year definition and the lead time
17 it takes away from you, given that you want to continue
18 business as in the past. And you made it very clear, at
19 least to me, in response to that question that you didn't feel
20 that the changes in the test procedure were going to make any
21 difference at all on the stringency of the standard. And I
22 think that question was virtually reproduced by the CARB, and
23 your answer came out appearing to be somewhat different. You
24 started talking about this experience and the statistics and
25 other things.

26 MR. AUSTIN: Let me try again. I don't think that
27 we were different.

28 What I intended to say was that the test procedures

1 were not the important factor in evaluating the stringency
2 question. You know, as far as we know now, you know, it's
3 the technological feasibility of the one-gram standard. The
4 test procedures are both designed -- assuming that EPA also
5 had a one-gram standard, everybody's test procedure would be
6 designed to make sure that the manufacturer was really
7 achieving the one-gram standard. You can't read the test
8 procedure, the words put down in the test procedure, assuming
9 they are carefully drafted and there are no glaring errors,
10 and determine that one is going to do it and the other one is
11 not going to do it. You just have to have experience with
12 those.
13 And it's our position that the Administrator, faced
14 with the obligation of making an affirmative finding that one
15 test procedure is more stringent than the other to support a
16 waiver, cannot make that decision unless there's been
17 experience and, therefore, all I intended to say was that the
18 Administrator cannot, given these two procedures, make a
19 finding that the CARB procedure was more stringent than the
20 EPA procedure and, therefore, the Administrator could not
21 base a waiver decision on the test procedures.
22 CHAIRMAN JACKSON: Okay. Now, aside from what you
23 are telling us that the Administrator has to do, can you tell
24 us what your opinion is about the changes in the procedures
25 as it relates to the ability to meeting the one-gram standard?
26 MR. EMBREKTS: Well, before we get to the one-gram
27 standard, we really have to worry about the 1978 standards,
28 Phase 1, for which California wants us to go through a

1 certification as it relates to their specific purposes, even
2 though the uncontrolled vehicles that we make meet and would
3 not require any control hardware. And to some extent, for
4 some models, that is also true for the '78 standards. And
5 then it would propose to enforce, when they start looking at
6 what essentially amounts to the federal standard to which they
7 have no standard, that's the carbon monoxide standard, and
8 essentially we wind up regulated by dual authority.
9 The test procedure itself offers far less flexibility
10 for comparison than a staff choice, for instance, on an engine
11 family or the configuration that needs to be tested. That
12 alone could override this entire discussion because the staff,
13 the staff decision -- Let's assume now California were to
14 certify independent of EPA, or perhaps they would disagree with
15 EPA on what the engine family ought to be, or perhaps what
16 configuration it ought to be or what add-on items ought to --
17 as options to be tested. That probably has as much, if not
18 more, influence, and we are now talking about certification
19 testing, the test procedure for certification.
20 CHAIRMAN JACKSON: You make the presumption that
21 they all have to meet the standards. How can that make any
22 difference? We are not talking about bikes that are selected
23 that meet the standards and bikes that aren't selected that
24 don't meet the standards. They all got to meet the standards.
25 MR. EMBREKTS: That's right.
26 CHAIRMAN JACKSON: So how can that make any differ-
27 ence?
28 MR. EMBREKTS: I think that's --

1 CHAIRMAN JACKSON: The one thing common about the
2 whole exercise is the standard. They got to meet the
3 standards. All of them got to meet the standards.
4 MR. EMBREKTS: That's what we say. I think we have
5 been saying it all along, that you really -- the conclusion on
6 the test procedure alone, in our mind, CARB did not change test
7 procedures; they changed standards and the times when these
8 standards are effective.
9 CHAIRMAN JACKSON: I got the point about the time,
10 but I don't know how they have changed the standard as it
11 relates to the change in test procedures.
12 MR. AUSTIN: Maybe I can answer your question. I'm
13 not sure. But as far as we know from reading and comparing the
14 two test procedures, there is no one, you know, sentence or
15 paragraph or particular requirement of the CARB procedures
16 which would make it any more or less difficult to meet the
17 1982 standard than of the EPA procedures.
18 MR. GRAY: I have one more question. As far as the
19 lead time is concerned, the lead time difference with respect
20 to the CARB requesting to adopt the model year instead of the
21 calendar year for the effective date of the '82 standard. If
22 I understand your process, the process that you described
23 earlier, you would begin production of 1982 motorcycles,
24 model year motorcycles, in the late Summer of 1981.
25 MR. EMBREKTS: Certified production. We would be
26 conducting certification tests presumably earlier that year.
27 MR. GRAY: Right.
28 MR. EMBREKTS: So we would have to be ready. There

1 would be certified production approximately July 1.
2 MR. GRAY: But the key is that you are ready to
3 begin production on a certain date, and you target for July 1
4 of 1981.
5 MR. EMBREKTS: That's what we are talking about.
6 MR. GRAY: I still have a hard time understanding the
7 practical real difference between the existing situation that
8 exists with the existing CARB regulations and the situation
9 that would exist with the implementation of a model year
10 standard relative to your concerns. That is as the CARB
11 regulations now stand, you would still have to begin production
12 of 1982 model year motorcycles in July, and then beginning
13 January 1, 1982, you would be faced with a one-gram standard.
14 And earlier you said for the kind of technology required to
15 meet that standard, you would require a different design
16 entirely, necessitating the introduction of that design at the
17 beginning of the model year.
18 So that's almost circular. It brings you back to
19 say that, from a practical standpoint, the existing requirement
20 is that you begin to introduce the '82 technology on January 1,
21 1981. Is that logic faulty?
22 MR. AUSTIN: '82, I think you meant to say.
23 MR. GRAY: No, '81.
24 MR. EMBREKTS: Well, are we saying that one kills
25 and the other kills dead?
26 MR. GRAY: No. I'm asking you to clarify that
27 course of logic, which is what I summarized from the previous
28 discussion that was still troubling me. That is that in any

1 case you have to start model year of 1982 production beginning
2 July 1, 1981, and yet earlier you had said that the technology
3 required to meet that level would be so significantly different
4 than the technology of the 1981 motorcycles that it would
5 essentially require the introduction of that technology
6 beginning with the introduction of the model year production.
7 So what I am saying is it's difficult for me, there-
8 fore, to see any practical difference between the current
9 CARB requirement and the requirement that the standard begin
10 with the model year as it deals with Harley-Davidson.
11 MR. EMBREKTS: The practical difference is that you
12 people appear to be telling us in 1977, why don't you plan
13 now on your model year beginning January 1, 1982, because
14 that will give you six more months just in case you can't
15 make it, and we -- and that if that were -- the difference
16 between the two, I guess it would -- it could be entertained,
17 you know, but it seems to me that you have to look at the
18 requirement itself, that one is different from the other in
19 the sense that what it requires us to do, what one required us
20 to do and what does the other require us to do. And to say
21 that it's no change is not even supported by your own commen-
22 tary because you say you ought to change to accommodate it.
23 MR. GRAY: But granted --
24 MR. EMBREKTS: So there is a significant change.
25 Perhaps we may not agree as to its -- you know, depending on
26 the side of the argument you pursue, but it is a very
27 significant change.
28 MR. GRAY: It's definitely a change in terms of the

1 requirement. But as I understood your discussion, it seems a
2 bit academic with respect to the type of technology required
3 to meet that level of control and the constraints, the
4 practical constraints, that Harley-Davidson has on the intro-
5 duction of a model year, of a new model year bike.
6 In other words, it seemed to be saying that the
7 technology required for the 1982 standards is such a departure
8 from previous technology that that in itself would require that
9 technology to be introduced at the beginning of a model year as
10 opposed to, for example, the earlier standards, which you said
11 were more typical of add-on technology and, as such, they
12 could be introduced in the middle of a model year's production.
13 And it just seemed to me like that the current
14 requirement that says that the '82 standards become effective
15 January 1, 1982, is little different as it relates to Harley-
16 Davidson's situation than the requirement that the standards
17 become effective with the introduction of the model year 1982
18 because you said that, for that technology, you will have to
19 introduce it at the beginning of the model year anyway. And
20 that's the -- you know, the difficulty that I had with under-
21 standing, you know, the practical aspects of the argument.
22 Certainly on its face, it's a very different
23 requirement.
24 MR. AUSTIN: I think the only practical aspect, if
25 I understand what you are saying, is that we should, since we
26 have to put out a new motorcycle anyway, we ought to put it
27 out January 1, 1982, instead of July, 1981.
28 CHAIRMAN JACKSON: You may put it out anytime you

1 want to.

2 MR. AUSTIN: As a practical matter, you know, by
3 contract and otherwise, the Harley-Davidson plant shuts down
4 in July. And what you are suggesting is that, you know, they
5 shut down for a month in July, but you don't change over your
6 tooling until the end of the year, and then do the tooling
7 changeover at the end of the year. That's just two shutdowns
8 and, you know, it's not feasible practically. But it's
9 possible, yes. We conceded that.

10 MR. GRAY: Really what I was saying is a little
11 different than that argument, and it's just simply that you
12 had made the statement that the technology required for that
13 level of control would be so new that it would require its
14 introduction at the beginning of the model year. And you
15 had, in addition, said that your model year, for practical
16 considerations, must begin July 1, 1981, in this case. And
17 so those two facts seem to go together and say that, inde-
18 pendent of when the '82 regulation goes into effect, that
19 Harley-Davidson will produce 1982 motorcycles meeting the
20 1982 standards beginning on January 1, 1981.

21 MR. THOMAS AUSTIN (CARB): July.

22 MR. GRAY: I'm sorry. July 1.

23 CHAIRMAN JACKSON: Either with the CARB reg or the
24 changed reg.

25 MR. GRAY: Either you can wait or you can't. And
26 if you can't, you have got to introduce it in July in either
27 case. And that was the sort of circular logic that I was
28 brought to in listening to the statements. And I was just

1 asking for a practical situation, has it really changed with
2 respect to Harley-Davidson, because it didn't appear to.
3 MR. EMBREKTS: As a legal requirement, on the face of
4 it, it doesn't appear to, either, using that analysis to the
5 end because you are saying that January 1 would be the effec-
6 tive date.
7 MR. GRAY: Well, I'm saying that if we were to
8 analyze that issue with respect to Harley-Davidson, we would
9 have the one bit of testimony that said for the technology
10 required, we would have to introduce it in January no matter
11 what -- I mean July of '81 no matter what.
12 MR. EMBREKTS: I think that's what we are saying,
13 yes.
14 MR. GRAY: And so I -- for that reason, it's
15 difficult for me to see how that would impact Harley-Davidson
16 in any case, that is how the effective date model year
17 introduction versus January 1 of 1982 would, in a practical
18 sense, impact what you can or cannot do.
19 MR. EMBREKTS: Well, it could, in the sense that
20 it is conceivable that under those circumstances, the
21 practical -- you would be conducting your certification
22 testing and, say -- let's assume now that you were to fail it.
23 I think the difference between the two would be that perhaps
24 some time -- some type of tuning, assuming that it would not
25 be a fundamental flaw such that cannot be corrected, then in
26 one case we are talking about an introduction of the certifica-
27 tion would be attempted in any case earlier in that same year.
28 Let's say the fundamental technology is in place,

1 but for some reason the certification itself cannot be
2 accomplished up to July 1 for some reason. Now, let's further
3 assume that some adjustment allows that to be accomplished.
4 Then we now say you now have to continue certification to what
5 already is your basic '78 -- say your new model year motorcycle.
6 Meanwhile, all of your projections for that particular year
7 you have geared up your entire organization for this new
8 introduction, that all goes into abatement and you now continue
9 certification, the cut-off point in any case appears to be
10 January 1, '82. So this is -- these are the extra six months
11 that we are talking about.
12 CHAIRMAN JACKSON: But they are not extra under
13 either -- they are not different under either program.
14 MR. AUSTIN: I think what you were saying is that
15 you can market your 1982 model year motorcycle, which would
16 be the new motorcycle, from July until December 31st, 1981,
17 in compliance with 1981 production year standards, whereas
18 when you switch to a model year, you cannot market it during
19 that period of time because you have to meet a model year
20 standard.
21 MR. GRAY: I think you can as long as you continue
22 to call it the 1981 model year.
23 CHAIRMAN JACKSON: That's right, but they are not
24 going to do that. They are trying to make this argument
25 about the organization gearing up to selling new model year
26 and all that stuff, right?
27 MR. AUSTIN: Well, it's a matter of good faith.
28 I suppose anybody could lie and say that, you know, this is

1 our 1982 model, but it's really 1981.
2 CHAIRMAN JACKSON: No, no, no.
3 MR. AUSTIN: You know, that's -- certainly the
4 purpose of the law isn't to encourage manufacturers to be
5 basically dishonest.
6 CHAIRMAN JACKSON: No, that's not what we were
7 asking and certainly not what we mean. We are saying if you
8 call it a 1982, it's a 1982 instead of a 1981 standard.
9 MR. AUSTIN: Yes.
10 CHAIRMAN JACKSON: I'm saying if you don't call it
11 a 1982 and you say you haven't started your Job 1 for 1982,
12 then it's not going to be meeting the '81 standards until
13 January 1.
14 MR. AUSTIN: Right.
15 CHAIRMAN JACKSON: Then your option's gone away.
16 MR. AUSTIN: All I think Mr. Embrekts was saying
17 was that the major point for a production year, you could
18 market your 1982 vehicles honestly. We could say this is our
19 1982 motorcycle even though it didn't yet comply with the
20 1982 certification plans, even if you got certification before
21 1982, whereas if you go by a model year requirement, you can't
22 honestly start selling your 1982 model until it gets certified
23 as a 1982 model. That's the only difference.
24 CHAIRMAN JACKSON: I don't really think you could
25 have done that because of the umbrella of the federal law as
26 it would apply to those bikes that were being made in 1981.
27 MR. AUSTIN: That's right.
28 CHAIRMAN JACKSON: In other words, then you would

1 have the feds to deal with as opposed to just California.
2 MR. AUSTIN: I think that's why the question was
3 asked whether it was the CO standard or the hydrocarbon
4 standard that was the difficult one to meet.
5 CHAIRMAN JACKSON: Well, I don't think I have heard
6 an adequate explanation in response to the point that's been
7 raised here about the difference just by virtue of what you
8 have said. Mr. Gray has made a good point, I think, that
9 there doesn't seem to be any real difference between trying to
10 meet the 1982 standards under the California definition of
11 model year versus the federal definition of model year. I
12 think he's made that point very vividly, that you make the
13 point about your contractors' shutdown. Going with the
14 scenario that we have been presenting here, you would have to
15 do that anyhow under a planned basis. Have you started
16 negotiating with the labor unions to change those contracts?
17 MR. AUSTIN: I don't think it adds to the record to
18 say over again what we have said. I thought Mr. Gray agreed
19 with us that there was a legal difference between the production
20 year and the model year. Perhaps he doesn't.
21 MR. GRAY: You can delay your model year introduction
22 to the end of a calendar year and it would be the same situa-
23 tion. If you ran into certification problems in the Summer of
24 1981, then you could continue to produce 1981 model year
25 bikes until the end of that year, at which point you would have
26 to have certified a 1982 bike or cease production essentially.
27 So, you know, in the ultimate, the definition would
28 become one.

1 MR. AUSTIN: The only difference is in the situation
2 you have last hypothecated, Harley-Davidson would have, you
3 know, to shut down for a month in July for no purpose, whereas
4 if you reverse the situation, they could switch over their
5 model year as planned during that shutdown and still have the
6 six months to try and get that production year into compliance
7 with the standard that became effective six months later.
8 CHAIRMAN GRAY: But you would have another shutdown.
9 You would have the shutdown associated with the introduction
10 of the new technology to meet the '82 standards January 1
11 under the CARB procedure.
12 MR. AUSTIN: Yes. I think what Mr. Embrekts
13 hypothesized, though, was a situation where you developed a
14 new motorcycle which you thought would satisfy the '82
15 standards, but because of minor, you know, adjustment problems
16 with the new motorcycle, you didn't get your certification
17 until July of '81, and you could mess with those adjustments
18 for a six-month period and get your certification by January 1,
19 which is the date you are required to have it. That doesn't
20 require any shutdown. It just means that, you know, you make
21 the adjustments that you need to make.
22 CHAIRMAN JACKSON: What bikes would you be producing?
23 MR. AUSTIN: What?
24 CHAIRMAN JACKSON: You would be producing 1981 bikes
25 and calling them 1981 bikes?
26 MR. AUSTIN: You would be producing '82 bikes and
27 calling them '81, but you don't have to comply with the '82
28 standards until the 1st of January.

1 CHAIRMAN JACKSON: Not the way the umbrella of the
2 federal law folds over that.
3 MR. AUSTIN: That's why I said I thought CARB had
4 asked the question whether CO standards are harder to meet
5 than the hydrocarbons. We said the hydrocarbon standards
6 would determine that. Presumably we would meet the five-gram
7 EPA hydrocarbon standard and the 12-gram EPA CO standard, and
8 the only standard we have left to meet is the one-gram
9 hydrocarbon, which is the California edition.
10 MR. GRAY: You would have to recertify for the
11 federal levels for the new bikes for the '82 model year
12 production for the few months that you would produce it, and
13 then have to recertify again for the introduction of the
14 change required for January 1, 1982.
15 MR. AUSTIN: Oh, yes, that's the basic reason we
16 have objected to duplicate certification in California and the
17 federal levels. You always run the risk of having to do
18 things twice.
19 Now, in '82, there is some reason for that because
20 they have a different hydrocarbon standard. In other years,
21 there isn't. And we would have to take that risk assuming we
22 couldn't -- you know, we couldn't meet the tightest standard
23 initially. But at least we would have the legal option of
24 trying to meet it for another six months.
25 MR. EMBREKTS: In earlier years, really a certificate
26 of conformity for our bikes is not really necessary for sale in
27 California if it were a hydrocarbon standard alone. It is
28 required to meet the carbon monoxide standard, and California

1 is out of that anyway. But certainly we could market
2 bicycle configurations that failed the EPA tests all the time
3 if it were the hydrocarbon standard alone, so why not?
4 CHAIRMAN JACKSON: Where are you going to market
5 them?
6 MR. EMBREKTS: I beg your pardon?
7 CHAIRMAN JACKSON: Where are you going to market
8 them?
9 MR. EMBREKTS: Say in California.
10 CHAIRMAN JACKSON: That's still the United States.
11 MR. EMBREKTS: Well, we sometimes ask that, too.
12 Well, you see --
13 CHAIRMAN JACKSON: That's why we had the question
14 about the CO standard is because, even though California is
15 given a waiver, or even if they don't have a waiver, you have
16 to meet the federal standard all the time everywhere.
17 MR. EMBREKTS: That's why we don't see the waivers
18 at this time anymore because there are two fundamental
19 different control strategies. California deliberately embarked
20 to control two-stroke motorcycles, and the record is quite
21 clear on that and how they did it, and the fact that they had
22 philosophical differences with the EPA on non-standard dis-
23 placement, sliding and all that, whereas the EPA strategy is
24 to control all motorcycles. So essentially now we -- we
25 would be discussing a part of the standard with both agencies,
26 and then the configuration on the other half of the same
27 emissions with one agency alone, and we would be under juris-
28 diction of both.

1 CHAIRMAN JACKSON: Mr. Austin, given that we have
2 had a considerable amount of discussion on this business about
3 the effects of the difference in model year versus calendar
4 year for application of the standards, if you feel any need to
5 supplement the record with any more expanded explanation, we
6 would certainly welcome it, showing in greater detail what
7 kind of implication it would have on Harley-Davidson's ability
8 to deal with their union, economic impacts, those kinds of
9 things that you could quantify such that we could better
10 assess the impact of that particular aspect of the reg.
11 MR. AUSTIN: That's prior to June 10th, did I hear
12 you say?
13 CHAIRMAN JACKSON: That's right.
14 MR. AUSTIN: All right. Thank you very much.
15 CHAIRMAN JACKSON: Thank you, sir.
16 MR. RUSSELL JURA: Good afternoon. My name is
17 Russell Jura. I'm representing Yamaha Motor Corporation - USA.
18 On July 15, 1975, the California Air Resources Board
19 (CARB) adopted exhaust emissions regulations for motorcycles.
20 The Environmental Protection Agency (EPA) granted the CARB a
21 waiver to enforce these standards on October 7, 1976. In
22 January of 1977, the EPA promulgated national motorcycle
23 exhaust emissions standards, and in consideration of those
24 national standards the CARB revised its motorcycle standards and
25 procedures on March 24, 1977.
26 Based upon events subsequent to the October 7 grant
27 of the CARB waiver, the EPA indicated that it would hold an
28 additional waiver hearing to consider continued California

1 compliance with the original, October 7 waiver. This hearing
2 is this additional hearing to consider that continued com-
3 pliance.
4 At this hearing Yamaha would like to comment upon:
5 (1) The continued validity of the waiver for the
6 1978-81 model years, and
7 (2) The continued validity of the waiver for the
8 1982 and subsequent model years.
9 Section 209(b) of the Clean Air Act states that a
10 waiver may be granted only if certain conditions are met. One
11 of these conditions is that the California standard be more
12 stringent than the applicable federal standard.
13 In the initial waiver grant the Administrator found
14 that there were no federal standards, and thus the California
15 standards were obviously more stringent than the non-existent
16 federal standards. However, with the promulgation of federal
17 standards and the adoption by California of those standards
18 for the 1978-81 model years, it is questionable if a finding
19 of greater stringency can still be supported for the 1978-81
20 model years.
21 The first reason why such a finding of greater
22 stringency fails is that California has adopted only a hydro-
23 carbon standard while the EPA has promulgated hydrocarbon
24 and carbon monoxide standards. Since a greater total
25 reduction of all pollutants will result from the control of
26 both carbon monoxide and hydrocarbons than just from the
27 control of hydrocarbons, the EPA standard is more stringent
28 as a whole than the CARB standard. Thus, the Clean Air Act

1 requires that there be no CARB waiver.

2 Further, in terms of technological modifications,
3 greater modification is required to meet the EPA standard than
4 the CARB standard. Uncontrolled four-stroke motorcycles
5 average 2-3 grams per kilometer hydrocarbons, and 20-30 grams
6 per kilometer carbon monoxide. No modification is required
7 of these vehicles for the 1978-81 model year to meet the CARB
8 standards. This fact is reflected in a statement made by Dr.
9 Robert Sawyer at the July 15, 1975 hearing at which CARB
10 adopted motorcycle exhaust emission standards. If I may quote
11 from Dr. Sawyer, he stated:

12 "What we are saying is that we are going to have
13 some standards for '78 that all 4-strokes will meet,
14 and half the motorcycles on the road ought to meet that
15 standard. Then for '80 we are going to have a standard,
16 even if it requires (inaudible) of two-thirds. Again,
17 all 4-strokes are going to meet that 1980 standard.
18 They meet it today. So it will not be until 1983 that
19 the 4-strokes get any suggestion of control."

20 Some control is necessary, however, for four-strokes
21 to meet the EPA carbon monoxide standard of 17 grams per
22 kilometer. This standard is below the average four-stroke
23 uncontrolled carbon monoxide emission, and engine modification
24 is necessary to meet the standard. Thus, technologically, the
25 EPA standard is more difficult or stringent than the CARB
26 standard as regards four-stroke motorcycles; and thus the EPA
27 standard is, within the meaning of Section 209(b), more
28 stringent than the CARB standard.

1 For many two-stroke motorcycles the modifications
2 necessary to meet the CARB hydrocarbon standard also will
3 enable the vehicles to meet the EPA carbon monoxide standard.
4 However, this is not true for all two-strokes. Some two-
5 strokes, particularly the large vehicles require additional
6 modifications to those done for hydrocarbon control to meet
7 the 17 gram carbon monoxide standard. This situation again
8 emphasizes that the EPA standard is technologically more
9 stringent than the CARB standard; and thus continuation of the
10 CARB waiver would violate Section 209(b).
11 A second reason for finding that continuation of
12 the waiver will violate the Clean Air Act is that the CARB and
13 EPA hydrocarbon standards are identical for 1978-81. If the
14 standards are identical then the only basis for a finding of
15 greater CARB stringency must be based upon a more stringent
16 CARB compliance and inspection procedure. Such a finding is
17 based upon reasoning that a more stringent compliance and
18 inspection procedure results in lower emissions levels for the
19 vehicle population.
20 It cannot be said that the California procedure,
21 for which there is not a specific and more stringent com-
22 pliance and inspection procedure, is more stringent than the
23 federal procedure. Such a specific procedure will be proposed
24 by the CARB staff in June. As stated in the staff report to
25 the CARB on March 24, Page 10, "The staff plans to propose
26 production motorcycle enforcement procedures and evaluation
27 techniques for consideration at the June Board meeting".
28 However, a future proposed procedure cannot be

1 considered. Just as at the first waiver hearing when the Hearing
2 Officer refused to consider whether the proposed EPA motor-
3 cycle standard would be more stringent than the actual
4 California motorcycle standard because a proposed standard has
5 no force in law, so must the Hearing Officer at this hearing
6 refuse to consider the proposed California compliance and
7 inspection procedure, because the California proposal has no
8 force in law. And, without a special California compliance
9 and inspection procedure the waiver is not being fulfilled
10 because the CARB standard is not more stringent than the EPA
11 standard. The CARB has indicated that it recognizes this
12 point, and will apply for a waiver after it has adopted its
13 compliance and inspection procedure for motorcycles in June
14 of this year.
15 The CARB has adopted the viewpoint that the 1978-81
16 model year waiver should be revoked. The only condition to
17 such revocation that CARB requests is that if the federal
18 procedure is determined to be unenforceable, that CARB be
19 allowed to revert to the pre-March 1974 -- Excuse me -- the
20 pre-March 24, 1977, CARB procedures.
21 Yamaha objects to this condition and possible
22 reversion. Such a reversion could put Yamaha in an untenable
23 position because Yamaha could not have the necessary time to
24 complete the CARB testing if the EPA procedure were voided.
25 Such position is precluded by the Clean Air Act, which requires
26 adequate lead time before a CARB standard may be enforced.
27 Yamaha does not object to such reversion with a provision that
28 CARB may enforce its standards only after Yamaha has had the

1 necessary lead time to comply with the reverted CARB procedure.
2 Dealing with the 1982 and subsequent model year
3 standards, we would like to state the following:
4 On March 24, 1977, when the CARB adopted the federal
5 hydrocarbon standards for the 1978-81 model years, the CARB
6 replaced its calendar year designations for the applicability
7 of emissions standards with model year designations. One
8 result of this action was for CARB to change the applicability
9 of its one gram hydrocarbon per kilometer standard from motor-
10 cycles manufactured on and after January 1, 1982 to 1982
11 model year motorcycles.
12 The importance of this change is that motorcycle
13 model year production usually begins nine to ten months prior
14 to the calendar year. Thus, 1982 model year production will
15 begin in approximately March of 1981. By changing the
16 applicability of the one gram standard to the 1982 model year
17 the CARB has thus advanced the applicability of the one gram
18 standard and reduced the lead time to comply with the standard
19 by approximately nine to ten months.
20 According to the requirements of Section 209(b) a
21 waiver may not be granted if either the necessary technology is
22 not available, or if there is insufficient lead time to apply
23 technology to production vehicles. The Administrator has
24 found in his October 7, 1976 decision that the technology to
25 meet a one gram standard requires conversion to four stroke
26 motorcycles. The Administrator in the first waiver decision
27 found that it was possible to convert sufficient models
28 to four stroke by January 1, 1982 to meet the basic California

1 market demand for motorcyles after that date.

2 However, Yamaha does not feel that the basic market
3 demand can be met by the 1982 model year by conversion to four
4 stroke. Based upon the Administrator's previously accepted
5 figure of the conversion of two modesl to four stroke per year
6 (beginning three and one-half --

7 There is an error in my typed copy here. We will
8 just skip that.

9 Since an incomplete half conversion cannot be
10 produced or marketed, this one and a half models really means
11 two models per manufacturer that cannot be converted by the
12 1982 model year. As there are three major Japanese two stroke
13 manufacturers which must convert to four strokes, this means
14 that six total models will not be converted by the 1982 model
15 year that would be converted by January 1, 1982.

16 This alone should be a basis for not advancing the
17 one gram standard to the 1982 model year. The lack of these
18 six models, particularly when combined with the lack of models
19 that will not be converted even by January 1, 1982, will create
20 gaps in the three product lines, which will leave the basic
21 market demand unfulfilled.

22 This lack of models will be especially acute in the
23 dual purpose market. To date, only one new four-stroke dual
24 purpose motorcycle has been introduced by the three major
25 two-stroke manufacturers. The other four-stroke introduction
26 by these manufacturers have been on-road bikes only.

27 The dual purpose market represents approximately
28 35% of the total street legal market, quoting from the 1976

1 R. L. Polk registration figures, so availability of this type
2 of vehicle is essential to the basic market demand. Further,
3 a street only vehicle is not a substitute for a dual purpose
4 vehicle because the dual purpose vehicle has an off-road
5 capability which the street only vehicle does not have.
6 The lack of our four-stroke dual models will be
7 alleviated by some conversion. But some models will not be
8 converted by the 1982 model years, and this lack of conversion
9 will result in the basic market demand for this type of
10 vehicle being unmet. And since the basic market demand is
11 unmet, the condition for a waiver that it be met is violated;
12 and the waiver must not go into effect until January 1, 1982.
13 In addition to these prepared comments, I would like
14 to make one additional comment on what was discussed this
15 morning regarding whether Title 13 testing waiver was
16 requested for motorcycles or not. I got rather confused in
17 that discussion as to exactly what the CARB was asking for
18 in terms of a waiver.
19 As the waiver publication in the Federal Register
20 indicated, Title 13 testing was being requested for all non-
21 passenger vehicles. However, as in the May 2nd mailgram that
22 the EPA received, the CARB apparently specifically excluded any
23 waiver for compliance and inspection testing of motorcycles
24 or especially -- specifically requested that no Title 13
25 waiver be considered for compliance and inspection testing for
26 motorcycles. And yet today the CARB seemed to be requesting
27 some sort of Title 13 authorization for a compliance, or for
28 at least for inspection of motor vehicles.

1 And I wonder if I could get some clarification on
2 that because we may wish to comment on that by June 10th.
3 CHAIRMAN JACKSON: I don't know whether you can get
4 clarification on that from me or not. I'm having a little
5 trouble with it myself. Seems like, or at least the impres-
6 sion I got was that California had requested a delay on con-
7 sideration of their compliance and inspection testing program
8 until they had some sort of meeting in June or something and
9 made some changes. And seems to me like that would go hand in
10 glove with the requirement to submit the application and to do
11 the inspection work that they intended to do.
12 And at such time as that whole package is ready,
13 that would be what we would consider.
14 MR. JURA: Well, if that's your understanding, then
15 we will act on that assumption.
16 CHAIRMAN JACKSON: If the CARB disagrees with that,
17 they are welcome to submit clarification to the record.
18 This argument you make about the lead time change --
19 MR. JURA: For the 1982 model, you mean?
20 CHAIRMAN JACKSON: Right. What's Yamaha's position
21 with regard to delaying the model year until January 1 of
22 seventy -- January 1, '82?
23 MR. JURA: We have several problems with that. The
24 first of those problems is a marketing problem that we have in
25 that motorcycles sell -- the retail marketing period for
26 motorcycles tends to be April, May, June and July. If we are
27 to begin our model year process or building our model years
28 beginning January 1st, we will have insufficient models to meet

1 the basic market demand for that calendar year and will be
2 forced to sell previous year's models, which would be a great
3 economic sacrifice to ourselves.
4 CHAIRMAN JACKSON: How great, assuming everybody else
5 does the same thing?
6 MR. JURA: Well, you must admit that a 1982 motorcycle
7 is more attractive in 1982 than a 1981 motorcycle is in 1982
8 and as is currently --
9 CHAIRMAN JACKSON: Now wait. In 1982, we are talking
10 about only '82 bikes either way.
11 MR. JURA: Right. No, no. I understand that. We
12 are not talking about producing 1981 motorcycles in 1982.
13 What we are talking about is whether we will have a sufficient
14 supply of 1982 motorcycles during the peak market demand in
15 1982 or whether we will only have a few 1982 models during the
16 peak market demand of 1982 and have leftover 1981 models
17 primarily.
18 CHAIRMAN JACKSON: Well, are you talking about
19 production capacity over a period of time? In other words,
20 you need these extra months of production to get you up to the
21 point where you have enough to react to the market?
22 MR. JURA: Yes, yes. We normally begin producing
23 many, many months in advance so that we will have a warehouse
24 full of motorcycles of the new model year which we can sell to
25 our dealers because they are economically more attractive.
26 CHAIRMAN JACKSON: But that's just a matter of
27 shifting down, isn't it? I mean couldn't you just shift
28 that, retain the concept, but you would just have to delay

1 everything by a certain amount of time?

2 MR. JURA: Well, we could delay everything, but we
3 would be left, since the peak marketing periods are in May,
4 June, July and April, we would be left, since we do not have
5 sufficient production capacity to build sufficient 1982
6 motorcycles in January, February, March, and then to transport
7 them -- them over the country, we do not have sufficient
8 1982 motorcycles to meet the peak marketing demand period.

9 MR. GRAY: Is it possible that you will produce all
10 of your model year 1982 motorcycles before the effective date
11 of the existing CARB 1982 standards?

12 MR. JURA: In other words, would we produce all of
13 our 1982 model motorcycles by December 31st, 1981?

14 MR. GRAY: Yes.

15 MR. JURA: I suppose it's possible. I don't think
16 that we have any plans to do so right now.

17 MR. GRAY: If you don't, then for the remaining
18 small production volume, would you have the same type problem
19 that Harley-Davidson mentioned in terms of the changing
20 technology required to meet the more stringent one-gram
21 standard and it might, therefore, be very difficult to change
22 over your production process to that limited small production?

23 MR. JURA: What we will probably do, if we have
24 any models that can meet the one-gram standard, is we will
25 produce those models either after January 1st, 1982; or if we
26 have enough demand for that model that we need to produce
27 some before January 1st, 1982, we will produce them in 1981
28 with the same configuration that we would produce them with in

1982. In other words --

MR. GRAY: What if you --

MR. JURA: -- let us say we had a four-stroke motorcycle that can meet the one-gram standard. Then we would produce -- in 1981, we would produce 1982 models that were one-gram configuration rather than five-gram configuration if we were also to produce that motorcycle after January 1st, 1982.

MR. GRAY: What if you have a motorcycle that can only meet the five-gram level and you are producing it up until the end of December, 1981? Will you continue to produce it in 1982 if it requires significant revision?

MR. JURA: We could possibly produce it beginning January 1st, 1982, for the rest of the United States. We would not, I would think, produce a five-gram motorcycle until January 1st, 1982, and then take that same model and turn her into a one-gram motorcycle for the remainder of the 1982 production run.

MR. GRAY: So you are saying that generally you would not anticipate changing a motorcycle configuration during the production process, especially that late in the production process, if it was -- if it had emissions greater than the one-gram level?

MR. JURA: That's correct.

MR. GRAY: So the issue that Harley-Davidson raised relative to needing to introduce that technology at the beginning of the model year production in your case doesn't really apply because, if it's needed, you are not going to

1 produce it; you are going to produce all your 1982 motorcycles
2 before the standards go into effect; if it doesn't need it,
3 you are sure you can produce it after the effective date?
4 MR. JURA: Harley-Davidson speaks for Harley-
5 Davidson, and they may have peculiar problems to themselves.
6 I cannot say whether -- I cannot really comment on the
7 accuracy of their statements as regards Yamaha or as regards
8 the entire motorcycle industry.
9 MR. GRAY: But as far as their problem of significant
10 conversion, it is just that you would experience a similar
11 problem, but your solution would be just to build all of your
12 motorcycles before the effective date of the standard?
13 MR. JURA: Yes.
14 MR. GRAY: That's pretty clear.
15 From your discussion of the 1982 standards, it
16 appears that it's limited specifically to the issue of lead
17 time and the applicability of the standards model year versus
18 calendar year.
19 MR. JURA: If you would like --
20 MR. GRAY: It almost emphasizes that point to the
21 extent that it's saying that, in your judgment, it is feasible
22 to meet the 1982 standard January 1, 1982, but it's not in --
23 what did you say -- May 1, 1981, when you began production of
24 that model year; is that correct?
25 MR. JURA: That would not be a correct interpreta-
26 tion of our message. The position of Yamaha has consistently
27 been that it is too early to discuss whether it's feasible or
28 not to meet the one-gram standard in 1982. The reason the

1 argument is worded the way it is is because the Administrator
2 has already made a determination that it is feasible to meet
3 the one-gram standard beginning January 1st, 1982.
4 MR. GRAY: Well, I guess the point is does this
5 lead time difference impact upon the feasibility, in Yamaha's
6 opinion, of meeting the standard?
7 MR. JURA: It most certainly could because it's
8 an additional nine to ten months less lead time that we have
9 to develop motorcycles to meet the standard.
10 CHAIRMAN JACKSON: Just a point of clarification
11 before we leave that point.
12 Have you construed what the Administrator did in his
13 waiver decision in your own words -- and I think they leave
14 something to be desired in terms of the accuracy of what he
15 actually did, and as far as this proceeding is concerned,
16 we will rely on that decision waiver as to what he did.
17 MR. JURA: Well, all I can say in response to that,
18 if the Administrator does not feel that the one-gram standard
19 is, indeed, feasible beginning January 1st, 1982, then he
20 should not have granted the waiver.
21 CHAIRMAN JACKSON: He did not find that it was
22 infeasible. That's different than saying it's feasible.
23 MR. GRAY: Does Yamaha support the specifics of the
24 time it requires to convert from two strokes to four strokes
25 that was offered in the waiver decision in the background
26 information and that you also summarized in your testimony?
27 Do you consider that as a valid estimate of the time it takes
28 for that conversion?

1 MR. JURA: The three-and-one-half year per model
2 figure came from an original Yamaha submission to the
3 Administrator, and I see no reason to change it at this time.
4 MR. GRAY: Will Yamaha be making that conversion at
5 a more rapid pace?
6 MR. JURA: More rapidly than one model every three
7 and a half years?
8 MR. GRAY: Yes.
9 MR. JURA: I can't say that they would. It might
10 be possible, but I will stick with our original estimate that
11 it takes three and a half years to convert.
12 MR. GRAY: You are making the conversions now, and
13 I just asked the question do you plan to be able to better
14 that time frame for conversion from two strokes to four
15 strokes?
16 MR. JURA: I can't comment on that.
17 MR. GRAY: And in your discussion, you did not
18 mention the possible technical concern of a CO standard. Is
19 it also your judgment that at the one-gram HC level that that
20 standard would be controlling when compared to a 12-gram
21 CO level?
22 MR. JURA: We intend to meet the 12-gram CO level
23 beginning in 1980 models, and I don't anticipate at this time
24 that we would have additional problems in meeting the
25 standard if we were to go to one-gram hydrocarbon.
26 MR. GRAY: Okay. I have got one question regarding
27 the pre-1982 standards.
28 It seemed that you were making the argument that

1 the test procedures between the federal and the California
2 standards and regulations were -- the differences were minimal,
3 and yet in the last paragraph of your discussion, you conclude
4 that you object to the possibility of CARB reverting back to
5 their old procedures in the event of a -- some change in the
6 federal procedure because there would be insufficient time in
7 order to certify by that procedure. Would you elaborate on
8 if they are so similar, why would it require more time and
9 why would it be more difficult?
10 MR. JURA: As of March 24, the test procedures are
11 identical. The Air Resources Board on March 24th adopted a
12 resolution adopting the EPA standards and test procedures.
13 And I think the question here is since the notice
14 was whether California continues to comply with the October
15 waiver of last year, whether the March 24th -- the question is
16 whether the March 24th CARB action continues to comply with
17 that waiver. So, therefore, our feeling is that the standards
18 presently and test procedures presently are identical.
19 MR. GRAY: With respect to the test procedure that
20 the California Air Resources Board has a waiver for, do you
21 consider those tests procedures more stringent than the
22 federal procedures because those would be the procedures that
23 the CARB would revert back to?
24 MR. JURA: Our point as regards the reversion is
25 that the CARB procedures that -- for which the waiver in
26 October was granted and which the CARB removed -- rather
27 changed on March 24th require -- were modeled after the
28 notice of proposed rule making that the EPA published. They

1 require a full useful life to run the emissions test vehicle.
2 So our point is that, if the EPA standards are invalidated,
3 it's going to require us a certain amount of time to start all
4 over again and go back to the zero point, run an emissions
5 test data vehicle and then run the durability. It takes a
6 certain amount of time to do this.
7 Now, if we find out on December 31st, 1977, that
8 the EPA test procedures have been invalidated and we then have
9 to run the California Air Resources Board procedures, it's
10 going to take us a certain amount of time to comply, and that's
11 what our point is, that the reversion should not be allowed
12 until we have had sufficient time to comply with the California
13 procedures.
14 MR. GRAY: I understand your point. But the question
15 was do you consider the test procedures that are covered under
16 the waiver, existing waiver, more stringent than the existing
17 federal procedures?
18 MR. JURA: I don't think that we can comment on --
19 I can't comment on that today.
20 MR. GRAY: You can't comment at all. I mean --
21 MR. JURA: I don't know if that's the answer you
22 want me to say. I can't say right now. I don't know. I
23 don't think it's relevant because I think that the question is
24 whether the March 24th standard . . .
25 CHAIRMAN JACKSON: Seems to me like whoever it is
26 that's challenging the federal standards in this procedure
27 ought to think about that a little bit. I hope they don't
28 win.

1 MR. JURA: Well, our point is that the Clean Air
2 Act prohibits the Administrator from granting an automatic
3 reversion without giving us sufficient time.
4 CHAIRMAN JACKSON: You are just saying, procedurally
5 speaking, that issue ought to be addressed at such time as a
6 reversion should occur?
7 MR. JURA: I think it should be addressed now. If
8 you grant CARB an automatic reversion, it may take several
9 months for the EPA and us and CARB to get together at another
10 hearing and address the problem. In the meantime, we are
11 stuck with motorcycles we can't certify or sell.
12 CHAIRMAN JACKSON: Then it's primarily because of
13 this durability thing?
14 MR. JURA: Yamaha is not involved in any lawsuit
15 on invalidating the federal test procedure and, you know,
16 we can't comment on these lawsuits.
17 MR. GRAY: Do you think that the California waiver
18 should be revoked?
19 MR. JURA: The Yamaha position is that we are
20 better off with one test procedure than with two test
21 procedures. However, our position is that, since the CARB
22 adopted the federal test procedures, which is identical --
23 adopted the federal test procedure on March 24th, and since
24 the standards are identical, that the California waiver
25 should be revoked for the 1978 -- from January 1st, 1978, to
26 January 1st, 1982.
27 MR. GRAY: Doesn't seem to me to be that's very
28 forward. The California, March the 24th, revised test

1 procedures are not just simply that we adopt the federal
2 standards. They were qualified to the extent that, without
3 that qualification, the ARB may very well feel that the
4 previous test procedures are more appropriate than the federals
5 alone -- the federal alone. So it is a basic issue, it
6 appears, as to whether or not that waiver should be revoked,
7 and you are in favor of it, you know, what's -- what's the
8 basis of your support for revoking the waiver? Do you think
9 it's -- it's not more stringent and, if so, why, or what basis
10 do you have for supporting or --
11 MR. JURA: I think we --
12 MR. GRAY: -- revoking the waiver, I guess?
13 MR. JURA: I think the first part of my discussion
14 regarding the absence of a CO standard in the CARB standard,
15 which applies both to the old CARB standard and the new
16 CARB standard, is valid in both cases. The fact is that you
17 must do additional modifications on four strokes and some
18 two strokes in order to comply with the EPA standards that are
19 not necessary just to comply with the CARB standards.
20 In addition to that, the CARB hydrocarbon standard,
21 at least for the 1980 and '81 model years in the case of the
22 old CARB standard, and for the 1978 and '79 model years in
23 the case of the March 24th standard, are absolutely identical
24 to the EPA standards. The Clean Air Act specifically states
25 that the California standards must be more stringent. Now,
26 they can be more stringent if California adopts a more
27 severe compliance and inspection testing program. However,
28 it has not done so and will not do so until June.

1 MR. GRAY: As far as the test procedures go, the
2 argument for the federal standard, including a CO -- CO
3 control, is the basis for your feelings and for your recommenda-
4 tion that the waiver should be revoked in total?
5 MR. JURA: As regards -- Yes, as regards the old
6 standard. When you get to the March 24th standard, in addition
7 to the CO standard, the EPA standards are identical.
8 And I may add that the EPA-CARB standards are
9 identical for the 1980 and '81 models so that would -- objec-
10 tion would also be raised for that point under the old CARB --
11 MR. GRAY: You had finished your discussion with a
12 statement that Yamaha does not object to such reversion with a
13 provision that CARB may enforce its standard only after
14 Yamaha had the necessary lead time to comply with the reverted
15 CARB procedure. What is the necessary lead time?
16 MR. JURA: That would depend upon what was invalidated
17 and where we are.
18 MR. GRAY: Say everything, how much lead time would
19 be necessary to --
20 MR. JURA: If it's December 31, 1977, we are going
21 to require what the Administrator in his waiver finding
22 described as 15 months of lead time to certify.
23 MR. GRAY: And you are saying it would take
24 Yamaha 15 months to certify by the California procedure? I'm
25 asking --
26 MR. JURA: No. The Administrator said that in the
27 waiver decision.
28 MR. GRAY: But my question was what did you mean by

1 that statement? What is the necessary lead time with respect
2 to Yamaha?
3 MR. JURA: Well, once again, all I can say is it
4 depends on the date and it depends on what was invalidated.
5 For instance, if the durability testing were
6 invalidated, perhaps it would take two or three months. If
7 the entire procedure were invalidated and we had to start over
8 again with a Part 1 application, perhaps it would take eight
9 or nine months. I can't give you an exact period of time
10 because it will depend upon what is invalidated and what must
11 be reverted.
12 If you read the CARB resolution, what they say is
13 that they will revert to the old CARB procedure only for what
14 is invalidated in the EPA procedure. So, since different
15 amounts in the EPA procedure could be invalidated, the amount
16 of lead time would vary.
17 MR. GRAY: What is it in the limit if the entire
18 procedure was invalidated? I mean how much lead time would
19 you have to have in that limit?
20 MR. JURA: To completely certify a year's production
21 of motorcycles?
22 MR. GRAY: Yes.
23 MR. JURA: I would say that we would like at least
24 a year.
25 I may add that the Administrator did quote a 15-month
26 period in his waiver decision.
27 MR. GRAY: I think in terms of quoting the
28 Administrator and his judgments, it's fair to make the

1 statement that the Administrator might often be conservative
2 since he did not have the same knowledge of factors affecting
3 lead time that the motorcycle manufacturers themselves have.
4 So, of necessity, that might require a more conservative
5 estimate.
6 I guess one other point relative to the 1982
7 standards, from the discussion, at least implied, that right
8 now Yamaha plans to have converted all of its two-stroke
9 motorcycles to four-stroke motorcycles by 1982 --
10 MR. JURA: I did not say that. I said that the
11 Administrator has found that conversion is necessary to meet
12 the 12-gram standard. We, of course, would prefer to develop
13 some means of certifying a two-stroke motorcycle to that
14 standard because we do worldwide production, and it's better
15 for us to continue to sell two strokes in this country.
16 MR. GRAY: That's true, but your whole argument was
17 based upon the lack of your four-stroke models will be
18 alleviated by some conversion. The whole argument was based
19 upon conversion from two strokes to four strokes. If you
20 don't need to convert that many two strokes to four strokes,
21 doesn't that change your lead time picture?
22 MR. JURA: It would change the lead time picture.
23 But at this point we have no way of producing a two-stroke
24 motorcycle and we anticipate no way of producing a two-stroke
25 motorcycle that can meet a one-gram standard by 1982, 1983,
26 1985 or any other date. At the present time, we don't feel
27 that it can be done.
28 MR. GRAY: So, with that statement, is it fair to

1 assume that Yamaha plans to have a full offering of four-
2 stroke motorcycles beginning in 1982?
3 MR. JURA: We will have as full a line as -- If we
4 cannot have two-stroke motorcycles -- if we cannot produce
5 two-stroke motorcycles to meet the one-gram standard, we will
6 convert to as many models as possible. However, as the
7 Administrator has indicated, the criteria is whether the
8 basic market demand can be met and not whether every model can
9 be converted. And as the Administrator and his staff found
10 and recommended, a two-gram standard would require conversion
11 to four-stroke motorcycles, and that cannot be done until the
12 1983 model year.
13 MR. GRAY: I don't think the conclusion was that it
14 required a conversion; it just said a conversion would allow
15 it to be done. I think there is a big difference there. It
16 appears there's been a lot of quoting out of context what the
17 Administrator found, required and/or determined. And in that
18 case, it just doesn't seem to be appropriate.
19 The question is simply are you making an argument
20 that you can't convert all your two-strokes to four-strokes
21 by 1982?
22 MR. JURA: It cannot be done.
23 MR. GRAY: It cannot?
24 MR. JURA: By the 1982 model year, no.
25 MR. GRAY: By 1982?
26 MR. JURA: By January 1st, 1982?
27 MR. GRAY: Yes. Surely you have made plans. You
28 plan to sell motorcycles in 1982. You know whether you are

1 going to two strokes or four strokes, if you have made some
2 commitment to convert lines, or else the Administrator's
3 judgment was very conservative if you can wait this long to
4 decide how many models you are going to convert. Where does
5 it all come out?
6 MR. JURA: Well --
7 MR. GRAY: Are you planning to convert? Are you
8 not planning to convert?
9 MR. JURA: We certainly are planning to offer a
10 full line of motorcycles for sale in California in 1982 and,
11 if necessary, we will convert.
12 MR. GRAY: And you have not yet made your decision to
13 convert?
14 MR. JURA: Well, we are hoping we don't have to
15 convert fully.
16 MR. GRAY: But at this point, you previously said
17 that you did not know of any technology that you could use on
18 two strokes to meet those standards. So in light of that
19 and not making plans to convert, and if that's --
20 MR. JURA: I didn't say we weren't making plans to
21 convert. I realize what you are trying to say, but, you
22 know, I'm not going to say here and now so it can be quoted
23 back to me two years later yes, we will completely convert to
24 four strokes if we can develop some sort of two-stroke
25 technology to meet a one-gram standard.
26 MR. GRAY: There is a lot of lead time regarding the
27 decision of going from two to four strokes, converting to --
28 MR. JURA: Not necessarily. It could be that we

1 could be going along with parallel development at this point in
2 time. I don't think that we could.
3 CHAIRMAN JACKSON: You could be?
4 MR. GRAY: Are you?
5 MR. JURA: We are working on development of new
6 four-stroke engines, yes. I think we would be foolish not
7 to be, because if we cannot change our two-stroke motorcycles
8 to meet the standard, we will have to produce four-stroke
9 motorcycles.
10 MR. GRAY: And you can produce them in that lead
11 time, yet you aren't making plans to do it?
12 MR. JURA: We are making plans, if necessary, to
13 produce four-stroke motorcycles.
14 MR. GRAY: How many have you converted thus far?
15 MR. JURA: We would say that we really have not
16 converted any thus far because of the differences between
17 two-stroke and four-stroke motorcycles and the market demand
18 for two-stroke motorcycles and four-stroke motorcycles. The
19 Administrator and the CARB would probably take a different
20 point of view. We have a two-stroke 400 cc street motor-
21 cycle. We also have a four-stroke 400 cc street motorcycle.
22 I'm certain the Administrator and the CARB would say that's
23 a conversion. We would say that they appeal to different
24 markets, and that's not a conversion.
25 If I may add just one more point, I think it's
26 important to remark to the Administrator that Yamaha did
27 support the adoption of a unified test procedure if California
28 is, indeed, to have its own -- its own standard or its own

1 enforcement because, you know, it's just -- it's uneconomical
2 for us to convert, to run two certifications. However, that
3 doesn't change the fact that we don't believe that California
4 should have separate enforcement authority until it adopts a
5 more stringent compliance inspection procedure.
6 CHAIRMAN JACKSON: Thank you, sir.
7 (Short recess.)
8 CHAIRMAN JACKSON: We are ready if you are.
9 MR. DENNIS DAVID: I'm ready.
10 Good afternoon.
11 CHAIRMAN JACKSON: I remember you from before. You
12 were the one that had the trouble with --
13 MR. DAVID: Yes.
14 CHAIRMAN JACKSON: -- the recorder.
15 MR. DAVID: I'm back in second gear today.
16 CHAIRMAN JACKSON: I don't think it will happen
17 today.
18 MR. DAVID: My name is Dennis David. I'm the
19 Manager of the Legislative Section of Kawasaki Motors Corp.,
20 U.S.A. With me today is Darrell Johnson, counsel to
21 Kawasaki.
22 I will depart substantially from our prepared
23 testimony as it has been almost totally rewritten. So I will
24 suggest that you need not refer to it during our testimony.
25 I'm here today to testify in opposition to any waiver
26 to California to enforce separate emission regulations for
27 motorcycles.
28 Before I address those specific points that are

1 germane to the issue before this hearing panel, I will
2 summarize our feelings regarding the situation that now
3 surrounds motorcycle emission regulations.
4 It was California's inability to develop a state
5 implementation plan that caused the courts to direct EPA to
6 develop the plan for California. To avoid the drastic
7 adverse effects that would have resulted from EPA's plan,
8 which included, among other things, restrictions on motor-
9 cycle usage and registrations in California, our company, as
10 well as other members of the motorcycle industry, suggested
11 that a more appropriate action would be the establishment of
12 emission standards for motorcycles. EPA agreed and began
13 the standards development process that has already resulted in
14 national exhaust emission standards for motorcycles.
15 However, during that development process, the
16 California Air Resources Board expressed its concern that EPA
17 would not adopt timely controls for motorcycles that would be
18 sold in California. Therefore, the Air Resources Board
19 adopted EPA's draft regulations, inserting its own hydrocarbon
20 standards. EPA was compelled to grant California's subse-
21 quent request for a waiver of federal preemption for those
22 standards because at that time EPA had not published its
23 motorcycle regulations, and any standard is more severe than
24 no standard. EPA granted the waiver but reserved the right
25 to reconsider its validity. Federal standards were issued in
26 January, 1977.
27 Subsequently, the Air Resources Board has modified
28 its regulations to be the same as EPA's except for a one-gram

1 per kilometer hydrocarbon standard for 1982 motorcycles. It
2 is those revised California regulations that are the subject
3 of today's hearing.
4 The Air Resources Board staff report of March 24th,
5 1977, states:
6 "EPA's efforts in controlling motorcycle emissions
7 have been made primarily to assist air pollution control
8 in extremely polluted areas such as the Los Angeles Basin.
9 California adopted motorcycle emission standards on its
10 own due to administrative delays on the part of EPA. At
11 present the federal and California standards commence at
12 the same time, and the difference between the levels of
13 control imposed by the two agencies is minimal."
14 We agree with this statement except that "administra-
15 tive delays" on the part of EPA did not prevent the adoption of
16 regulations which are effective on January 1, 1978, the same
17 date that California's regulations became effective. The only
18 significant difference is California's one-gram per kilometer
19 hydrocarbon standard for 1982 models.
20 Based on the nature of motorcycle manufacturing and
21 the background that has led us to today's hearing, we sincerely
22 believe that EPA is the proper agency to regulate motorcycle
23 emissions and that EPA should be the sole agency to establish
24 emission controls for motorcycles.
25 We oppose motorcycle emission regulations being
26 administered by two separate governmental agencies, EPA and
27 the Air Resources Board. We honestly do not believe that it
28 is in anyone's best interests that this situation continues.

1 It is overkill and unnecessarily increases the cost of
2 government and motorcycle retail prices.
3 Now, I will address the specific issues for which
4 this hearing is being held.
5 The Air Resources Board -- The Air Resources Board's
6 amended motorcycle regulations are, in essence, identical to
7 EPA's with two exceptions.
8 First, the Air Resources Board will require that
9 manufacturers submit to the Executive Officer a complete copy
10 of the application for certification submitted to EPA, together
11 with a copy of the Certificate of Conformity issued by EPA.
12 Second, the Air Resources Board has adopted a new
13 one-gram per kilometer 1982 hydrocarbon standard. In order
14 for EPA's October 1, 1976, waiver to remain valid, the Air
15 Resources Board's amended regulations must continue to meet
16 the waiver requirements contained in Section 209(b) of the
17 Clean Air Act. As the amended California regulations contain
18 standards that vary in stringency according to model year,
19 each level of control must be considered separately.
20 California's revised regulations applicable to
21 1978 model year motorcycles manufactured on or after January 1,
22 1978, and 1979 model year motorcycle, and California's revised
23 regulations applicable to 1980 and 1981 model year motorcycles
24 fail to continue to comply with the conditions of the October 1,
25 1976, waiver.
26 Section 209(b) of the Act requires that the state
27 standards for which a waiver is being sought be more stringent
28 than applicable federal standards. California's '78 through

1 '81 standards are the same as those contained in EPA's regula-
2 tions. The test procedures currently proposed for determining
3 compliance with the California standards are EPA's test pro-
4 cedures. The Air Resources Board has advised EPA that the
5 Title 13 compliance testing and inspection program have been
6 withdrawn and will be the subject of further action by the
7 Air Resources Board and further waiver proceedings. However,
8 the Air Resources Board also states it has the right to inspect
9 motorcycles, which right emanates from:
10 1. Section 2101(a) and (d) of Title 13, and
11 2. Is implicit in California's right to certify.
12 With regard to California's implicit right to
13 inspect because of its certification rights, since California
14 no longer has standards and test procedures more stringent
15 than EPA's standards and test procedures for '78 through '81,
16 the Air Resources Board no longer qualifies for the waiver
17 granted October 1st, 1976 and, therefore, no longer has
18 certification rights from which the alleged implicit right
19 to inspect may flow.
20 Secondly, the very sections in Title 13 which the
21 Air Resources Board states are the authority to test are what
22 the Air Resources Board said in its mailgram of May 2nd, 1977,
23 would not be considered today.
24 Finally, to the extent that the Air Resources Board's
25 inspection rights pursuant to Sections 2101(a) and (d) are to
26 be considered, EPA has substantially the same rights in its
27 own test procedure. Please refer to Section 86.441.78 of
28 EPA's regulations. It gives EPA the right of entry, including

1 in Subparagraph (b), (d) and (e) the right to inspect produc-
2 tion motorcycles at any facility, whether owned or controlled
3 by the applicant, for the purpose of determining that produc-
4 tion vehicles are the same in all material respects as the
5 vehicle which has been certified.
6 One further point regarding California's '78 through
7 '81 standards, with regard to the proposed requirement that
8 manufacturers submit copies of their application for certifica-
9 tion and the certification -- the Certificate of Conformity
10 to the Air Resources Board Executive Officer, Section 209(a) of
11 the Act specifically prohibits any state from requiring:
12 "certification, inspection, or any other approval
13 relating to the control of emissions from any new motor
14 vehicle or new motor vehicle engine as condition precedent
15 to the initial retail sale, titling, if any, or registra-
16 tion of such motor vehicle, motor vehicle engine, or
17 equipment."
18 California's proposed requirement that manufacturers
19 submit copies of their EPA documents is a mandatory prerequisite
20 to the sale or offering for sale of motorcycles in California,
21 and is specifically prohibited by Section 209(a) of the Act.
22 Therefore, California's standards and regulations for
23 '78 through '81 motorcycles fail to continue to comply with the
24 requirements of Section 209(b) of the Act. EPA's October 1,
25 1976, waiver must be found to be invalid and should be revoked.
26 The sole remaining item is California's modified
27 one-gram per kilometer HC standard for 1982 and subsequent
28 model year motorcycles. We submit that the California

1 one-gram hydrocarbon standard for 1982 and thereafter is a new
2 standard requiring EPA's consideration of technological
3 feasibility, cost of compliance and lead time because the
4 implementation date has now been changed by California from
5 that which existed in the prior waiver hearing.
6 We have previously stated that a one-gram per
7 kilometer standard in the 1982 time frame is technologically
8 infeasible. We have no new evidence that changes that
9 opinion. A one-gram per kilometer standard will probably
10 mean the demise of all two-stroke motorcycles.
11 Further, large four-stroke models could not achieve
12 such a level without the addition of bolt-on technologies,
13 such as catalytic converters or thermal reactors. Automotive
14 control technology could not be transplanted onto motorcycles
15 due to the inherent differences in the vehicle and their
16 operation, size, weight, vibration, cost, etc., all are very
17 different.
18 To date, we have not been successful in developing
19 workable technology that would permit compliance with the
20 one-gram per kilometer standard, and we have grave concern
21 that acceptable technology could not be developed by 1982.
22 There is no evidence in this record, or in the
23 records of the ARB's previous hearings that there is sufficient
24 lead time giving consideration to costs to meet the 1982 one-
25 gram per kilometer HC standard, either as originally proposed
26 or with the Air Resources Board's new shortened effective
27 date. Regardless, California's one-gram per kilometer
28 standard as now amended no longer complies with the conditions

1 of the October 1st, 1976, waiver. In making that waiver
2 decision, the Administrator was considering a standard
3 applicable to new motorcycles manufactured after January 1st,
4 1982. California's amended standard now applies to 1982 and
5 subsequent model year motorcycles. This difference in the
6 implementation date of the standard decreases the lead time
7 remaining, thereby creating a new one-gram hydrocarbon
8 standard, and changes the conditions of the October 1st, 1976,
9 waiver. On that basis, the waiver for California's 1982
10 one-gram per kilometer standard must be revoked.
11 I also must comment on the Air Resources Board's
12 proposed qualification that, if all or part of the federal
13 test procedures are found to be invalid or unenforceable,
14 then the old California exhaust emissions standards and test
15 procedures for 1978 and subsequent production year motorcycles,
16 as amended February 20th, 1976, or the equivalent portion
17 thereof, shall govern.
18 Not only would the granting of the waiver for such
19 a contingency plan be outside the permissible boundaries of
20 Section 209(b), but it represents a physical impossibility to
21 manufacturers.
22 To illustrate, we are a little over seven months
23 away from the initial implementation of EPA's standards of
24 January 1st, 1978. Our EPA certification efforts are well
25 underway. If for any reason the Air Resources Board is
26 permitted to require certification testing that differs in any
27 material respect from that required by EPA, it would be
28 physically impossible for us to obtain certification in

1 California before January 1st, 1978.
2 New proceedings are required before a waiver can be
3 granted to California to enforce motorcycle emission standards.
4 Thank you.
5 CHAIRMAN JACKSON: Would you care to clarify the
6 points you made at the very last, why the -- if the change
7 occurred, the reversion back to California's standards, why you
8 could not possible certify for '78?
9 MR. DAVID: Certainly. The California exhaust
10 emissions standards and test procedures as amended February 20,
11 1976, are a working draft EPA document. It differs substan-
12 tially from the existing document that EPA has published. If
13 for any reason California were to enforce that regulation,
14 there just isn't time to go back, start all over with the
15 Part 1 application, do the testing and end up in 1978 with
16 certified motorcycles.
17 CHAIRMAN JACKSON: It's not anything different about
18 the way the two procedures are; it's just having to start over?
19 MR. DAVID: They are entirely different.
20 CHAIRMAN JACKSON: Well, how are they entirely
21 different?
22 MR. DAVID: They are entirely different.
23 CHAIRMAN JACKSON: What's different, significantly
24 different?
25 MR. DAVID: Probably the biggest significant
26 difference is the EPA's draft regulations, which became the
27 February 20th, '76, California test procedures, parallel to
28 the automotive certification requirements in that they require

1 an emission data vehicle and a durability data vehicle. The
2 method of testing goes to vehicles and all of the various
3 ins and outs of submitting applications, etc., are totally
4 different than the current existing EPA test procedures.
5 I don't know if I need to expand on that much more.
6 They are just not the same document.
7 CHAIRMAN JACKSON: Well, is there anybody that --
8 What's the basis for assuming that anything would happen to
9 the federal test procedures, test procedure itself?
10 MR. DAVID: What's the basis for assuming that
11 something could happen to it?
12 CHAIRMAN JACKSON: Yes. There is no legal challenge
13 to that, is there?
14 MR. JOHNSON: Maybe, Mr. Jackson, I can be of some
15 assistance there.
16 There currently is a -- there are two petitions
17 filed with the D.C. Circuit Court of Appeals, one of which
18 addresses itself to EPA's regulations, and the other of which
19 addresses itself to the grant by EPA of the October waiver.
20 As you know, if there is any doubt about whether a
21 person would like to address one of -- one who is affected by
22 those regulations would like to address an issue under there,
23 he must file in a timely manner his petition with that circuit.
24 And so certain precautionary measures have been taken.
25 Now, the basis, at least one of the bases of the
26 action taken addresses useful life and the manner in which
27 it's been defined in both the EPA test procedure and in the
28 California test procedure as waived in October. The basis of

1 the challenge in the EPA waiver was that, in order to be
2 consistent with Section 202(a), "useful life" had to be
3 defined in a certain manner, and EPA allowed it to be defined
4 in a manner contrary to that.
5 So specifically, the useful life issue is one way in
6 which both the federal procedure and the California procedure
7 possibly could be invalidated.
8 CHAIRMAN JACKSON: Not the test procedure.
9 MR. JOHNSON: Well, at least that aspect of it.
10 CHAIRMAN JACKSON: That's not a part of the test
11 procedure.
12 MR. DAVID: Perhaps I should say here that the
13 concern that the federal test procedures, or a portion thereof,
14 would be found to be invalid is not ours; it's the Air Resources
15 Board's. The requirement of reversion was inserted into their
16 amended regulations on March 24th, 1977.
17 CHAIRMAN JACKSON: But I'm just trying to get to the
18 point of your concern about if it did go to a reversion, what
19 the effect would be, and you were talking about the test
20 procedures, and I am asking -- my question relates to what's
21 the likelihood of anything happening to the test procedures
22 under some challenge that was hypothesized by the CARB. And
23 I don't see that there is any challenge to the test procedure
24 per se.
25 Now, there may be a challenge to some of the
26 definitional approaches that are used in certification under
27 the regs, but not the test procedure. The test procedure
28 thing, that measures exhaust emissions.

1 MR. JOHNSON: You are quite right. I mean other
2 than the actions which I have just mentioned, I'm not aware of
3 the basis of California's concern.
4 MR. DAVID: When we use the term "test procedures,"
5 we refer in general to the certification requirements, which
6 include not only the CVS testing methods, but also the
7 certification requirement, the submission of data, submission
8 of annual reports, preparation of your Part 1 application,
9 the method by which the vehicles are tested under the CVS
10 procedure.
11 So really Subparts (e) and (f) of Part 86 have to be
12 considered as a test procedure. If we revert to the old
13 California test procedure, that is EPA's old working draft,
14 it's much different.
15 CHAIRMAN JACKSON: I see. If we grant the waiver,
16 or if we could, what would be the situation if their con-
17 ditional reversion was based on reverting to the federal
18 program?
19 MR. DAVID: Well, I think that the only way that the
20 federal test procedures could be considered, could be found by
21 courts to be invalid, is that they are not consistent with
22 Section 202. I'm not sure I understand how that would all
23 hang together there, but --
24 CHAIRMAN JACKSON: Your problem --
25 MR. DAVID: -- that's not the way California's
26 regulations --
27 CHAIRMAN JACKSON: I understand.
28 MR. DAVID: -- amended regulations read.

1 CHAIRMAN JACKSON: I'm just trying to understand
2 the cause for concern here. If their reversion read revert
3 back to the federal program, which they have adopted,
4 essentially adopted, they have adopted the federal test
5 procedure and the federal approach for certification, and
6 they conclude that they are ostensibly equal and, therefore,
7 that they no longer need a waiver for them, but you say that,
8 because the reversion goes back to the old California program,
9 that causes you a lot of problems?
10 MR. DAVID: It's an impossibility.
11 CHAIRMAN JACKSON: It's an impossibility. But if
12 the reversion went back to the federal program, the federal
13 test procedures and the federal certification procedures,
14 then it wouldn't cause you any problem because you would be
15 where you were at the time such a court action, adverse court
16 action, came down with regard to the federal approach; is that
17 right? Is that fair?
18 MR. JOHNSON: I think that's probably a fair
19 statement. I don't think that's what's before us --
20 CHAIRMAN JACKSON: I understand.
21 MR. JOHNSON: -- but I think that's fair.
22 CHAIRMAN JACKSON: I understand. I understand.
23 MR. DAVID: I'm troubled by how a court could find
24 that some portion of the federal test procedures could be
25 invalid and then California could revert to those same test
26 procedures.
27 CHAIRMAN JACKSON: I haven't reviewed your petition.
28 I don't know.

1 MR. DAVID: Okay.
2 MR. GRAY: With regard to the 1982 standards --
3 MR. DAVID: Yes.
4 MR. GRAY: -- you discussed primarily the issue of
5 lead time again, the concern over the definition of model
6 year versus the applicability beginning with the first day of
7 1982.
8 MR. DAVID: Yes.
9 MR. GRAY: Do you have a similar situation to
10 Yamaha or the Harley-Davidson, or do you have a different
11 production situation?
12 MR. DAVID: Well, I think, based on listening to
13 their testimony this morning and knowing our situation, I
14 can't comment on where they are at. We do not consider that
15 the one-gram per kilometer standard in the 1982 time frame
16 is technologically feasible. So I guess our position may be
17 somewhat different than the others. I'm not sure.
18 MR. GRAY: Would you change a production line
19 beginning January 1, 1982, to incorporate a different
20 technology? Could you do that in your process?
21 MR. DAVID: No, we wouldn't.
22 MR. GRAY: You would not?
23 MR. DAVID: We would not. That's virtually
24 impossible. We can do that once.
25 MR. GRAY: So it means that, similar to the other
26 manufacturers, that you would have to incorporate that
27 different technology at the beginning of the model year, which
28 for you is when?

1 MR. DAVID: May, actually for us.
2 MR. GRAY: Similar to Yamaha?
3 MR. DAVID: Similar to Yamaha. I think the man
4 from Yamaha said nine to ten months earlier. Actually, our
5 next year's model year begins roughly with May production.
6 MR. GRAY: Would you have a similar strategy as
7 Yamaha explained relative to stockpiling, if you will, of
8 model year production prior to the beginning of that year,
9 calendar year?
10 MR. DAVID: I'm not aware of any strategy that we
11 would consider like that.
12 MR. GRAY: If you could not meet the standard, you
13 would not plan to produce ahead of time for that model year?
14 MR. DAVID: Well, we can't meet the standard now,
15 and we don't foresee any technology being forthcoming which
16 would permit us to meet that standard.
17 MR. GRAY: Are you planning conversions to four
18 strokes?
19 MR. DAVID: I'm bothered by the word "conversion."
20 We build four strokes and two strokes. You don't convert a
21 two-stroke motorcycle to a four-stroke engine. You build a
22 new four-stroke motorcycle.
23 MR. GRAY: Can you offer a full product line
24 offering of four-stroke motorcycles in this time frame?
25 MR. DAVID: No, we cannot.
26 MR. GRAY: How would you qualify that? What part
27 could you not offer in the California market in 1982?
28 MR. DAVID: Well, I think essentially in the area of

1 the lightweight single-cylinder two-stroke Enduros, which are
2 a unique vehicle configuration, we could not offer any of
3 those models under a one-gram standard. Those are a sizeable
4 part of our marketplace in all states.
5 MR. GRAY: That's an exception to the one gram?
6 MR. DAVID: That would be one exception. We are not
7 positive that we will eliminate all of our larger two-stroke
8 multi-cylinder machines.
9 MR. GRAY: What do you mean? You think you can
10 have technological fixes on those motorcycles that could meet
11 the standards?
12 MR. DAVID: Well, we would hope so, but we haven't
13 developed any technology which would make those motorcycles
14 come down to one gram per kilometer. I think one gram per
15 kilometer means the end to two-stroke motorcycles in the
16 United States, or at least in California, if that's their
17 standard.
18 MR. GRAY: You will have four-stroke also to compete
19 with those for similar purposes to satisfy that market?
20 MR. DAVID: No. They don't compete for similar
21 purposes. I think that's the misnomer that we have going
22 here today. A 125 single two-stroke Enduro does not really
23 compete with a 125 single four-stroke Enduro. They are really
24 quite different motorcycles. I think we all know that.
25 MR. GRAY: They may be different motorcycles, but
26 the question is will the same customers buy a four-stroke
27 instead of a two-stroke. If they won't -- If they won't
28 compete or won't substitute, then why build them?

1 MR. DAVID: Are you asking me why we wouldn't build
2 them? If we couldn't sell them, we wouldn't build them. That
3 would be the answer.
4 MR. GRAY: I don't know. You say a four-stroke is
5 not a viable alternative to a two-stroke in certain areas.
6 You mentioned specifically the Enduro. What about the other
7 areas, I'm asking.
8 MR. DAVID: Can you satisfy basic market demand in
9 that area. I mean in the absence of specific marketing
10 statistical information to show you, I can relate my own
11 feelings in that area. Different strokes for different
12 folks. Two strokes are not four strokes. And I think the
13 editor of "Cycle News" at one of these hearings says the guy
14 who buys that two stroke probably won't buy that four stroke
15 if it's sitting side by side. In fact, he may not buy the
16 four stroke if the two stroke is absent.
17 MR. GRAY: That may very well be, but you do plan to
18 have four-stroke offerings across the full range --
19 MR. DAVID: No.
20 MR. GRAY: -- of bike sizes except for the two-
21 stroke Enduro?
22 MR. DAVID: I think what's being confused here is
23 this question of conversion to four-stroke engines.
24 MR. GRAY: Well, my question didn't touch on
25 conversion. Do you plan to have four strokes across the
26 general same product mix size that you have today with two
27 strokes?
28 MR. DAVID: Well, that's confidential information.

1 If you prefer, we would like to submit that in a confidential
2 submission.
3 MR. GRAY: I mean it's relative to the feasibility
4 of the '82 standards.
5 MR. DAVID: That's right. But our future product
6 planning in regards to engine types and sizes is confidential
7 information. I would be happy to submit that under a
8 request for confidential treatment.
9 MR. GRAY: If there is no question that you can't
10 do it, there is no need to say you are doing it confidentially.
11 Regarding the --
12 CHAIRMAN JACKSON: Excuse me. If you feel it's
13 necessary to submit something that's otherwise -- that you
14 can't submit here because of a confidential nature, to amplify
15 upon your point, you may -- I hasten to say that anything
16 that you submit to us upon which we rely that's of a confi-
17 dential nature is not going to get a whole great deal of
18 reliance. It's very difficult to make -- to rely on it if
19 it's something that can't be made public.
20 MR. DAVID: I appreciate that.
21 CHAIRMAN JACKSON: I can't deny you . . . We
22 can't -- I don't think we can allow an adverse inference to
23 be drawn because of your claim for confidentiality. On the
24 other hand, I will point out to you that it's very, very
25 difficult for us to make any kind of a decision on information
26 that can't be made generally available to the public.
27 But it's your judgment. We would have to play on
28 how important you think that is to whatever position you may

1 have taken.

2 MR. DAVID: I sympathize with your position. You
3 must understand that information regarding our future product
4 planning by engine type, size, use of motorcycles, etc., is
5 extremely confidential information.

6 MR. GRAY: I guess it will suffice to say that you
7 are not arguing that you will not be able to be competitive
8 in '82 in a general sense, at least?

9 MR. DAVID: What we said is we can't make the --
10 we won't sell anything in California in '82 under a one-gram
11 standard with the technology we know today or what we can
12 forecast with this compliance by that time. And I suppose if
13 no one else is selling motorcycles, that's competitive.

14 MR. GRAY: Well, I guess we will see how that goes.
15 Do you consider the federal test procedures more stringent,
16 less stringent, equal to the test procedures covered under the
17 existing California waiver?

18 MR. DAVID: I don't know. If you talk about just
19 the test procedures, in other words, how you certify using
20 these two vehicles or one vehicle over here, I don't know;
21 I don't have any experience at that. We don't have any
22 experience testing using both procedures. So if you measure
23 up two motorcycles, two certification vehicles using both
24 test procedures, I don't know.

25 MR. GRAY: Put a different way, you would not argue
26 that the one-gram HC standard by the federal test procedure is
27 more stringent than the one-gram standard by the existing
28 California waived test procedure?

1 MR. DAVID: I don't know.
2 MR. GRAY: But you would not make that argument at
3 this hearing?
4 MR. JOHNSON: We can't make it.
5 MR. GRAY: You can't make it?
6 MR. JOHNSON: No.
7 MR. GRAY: Or you won't?
8 MR. JOHNSON: We can't.
9 MR. GRAY: You have also not mentioned anything about
10 the limiting potential of CO control at the 12-gram level.
11 Do you share the technical judgment of the previous witnesses
12 regarding the fact that HC will likely be limiting at the
13 one-gram level as compared to CO at 12 grams?
14 MR. DAVID: I don't know. I really don't know the
15 answer to that question. I think in the interim time frame,
16 we know for EPA's '78 standards, we know that the 17-gram
17 CO standard will be a limiter for big four stroke, not the
18 hydrocarbon standard. For the future, we don't know. We
19 don't know what is the limiting factor at that point. We
20 believe we can make the 12-gram per kilometer 1980 model to
21 EPA standard. If that's an answer to it.
22 MR. GRAY: Is it fair to say, then, that you are
23 not arguing that at that level, the one-gram HC and the 12-gram
24 CO is not more stringent than a one gram alone? Is that an
25 issue with respect to your company?
26 MR. DAVID: Would you say that again?
27 MR. GRAY: I said would you consider a one-gram
28 HC plus the 12-gram CO in any way more stringent than a

1 one-gram HC alone? Would you make that argument? Can you
2 foresee how that could happen?
3 MR. DAVID: I really don't know how to answer that
4 question, and I really don't know what the purpose of asking
5 it is. I guess I'm confused.
6 CHAIRMAN JACKSON: He's saying if you are going to --
7 if you are going to one gram per kilometer for HC, the fact
8 that already meets the 12, do you anticipate that going to
9 one gram will cause CO to go up?
10 MR. DAVID: I don't know. We haven't gotten to one
11 gram yet with anything that's workable. I don't know if it
12 will cause CO to go up or not. We have no NO_x standards for
13 motorcycles, so we have a reasonable latitude in that area.
14 CHAIRMAN JACKSON: Excuse me?
15 MR. DAVID: I say we have no NO_x standards currently
16 for motorcycles, so we have some latitude in those areas.
17 CHAIRMAN JACKSON: You are not suggesting that we
18 do?
19 MR. DAVID: No, I'm not suggesting that you do, but
20 I don't know the exact relationship of CO and hydrocarbons,
21 and I don't think it's been well established in our testing.
22 CHAIRMAN JACKSON: Let's see. You made the point
23 about this, you made it quite obviously that the new standards
24 for which a waiver -- the 1982 standard is a new standard for
25 which the California is -- CARB is seeking a new waiver --
26 MR. DAVID: That's correct.
27 CHAIRMAN JACKSON: -- is that correct?
28 MR. DAVID: That's correct.

1 CHAIRMAN JACKSON: That's based on this lead time
2 argument with the production date being something like eight to
3 ten months sooner than what it might have been.
4 MR. DAVID: Well, it's based on the fact that the
5 regulation applies to different motorcycles than it did before
6 it was amended. In our case, that has the effect of moving
7 the implementation date forward about eight months. But on
8 paper, the two previous revisions, the one for which a waiver
9 has been granted and the March 24th regulation, which is the
10 purpose of this hearing, are not the same regulation. They
11 are a different regulation.
12 CHAIRMAN JACKSON: But what I am getting at is that
13 which makes it a new -- a new standard. You have said
14 earlier in your testimony here --
15 MR. DAVID: Yes.
16 CHAIRMAN JACKSON: -- that you didn't think there
17 was any differences in the test procedure.
18 MR. DAVID: No.
19 CHAIRMAN JACKSON: The test procedure, that which
20 measures exhaust emissions, not certification procedures.
21 That's the reason I asked that point.
22 MR. DAVID: Okay.
23 CHAIRMAN JACKSON: And you said you didn't think
24 there were --
25 MR. DAVID: I think there have been a number of
26 minor and somewhat, in some cases, probably fairly major
27 changes to Subpart (f) of the federal regulations from the
28 original working draft to the final document which was issued

1 in January. Whether those changes have the effect of making
2 that test procedure more stringent or not, I don't know. I
3 know that EPA decided not to publish the original working
4 draft because they made amendments which are more appropriate
5 for motorcycle emission testing.
6 CHAIRMAN JACKSON: Well, what I am trying to get at
7 here is what is the scope of your basis for saying that it's
8 a new standard? Now, it's either because of the lead time
9 problems --
10 MR. DAVID: Yes, sir.
11 CHAIRMAN JACKSON: -- it's because of the test
12 procedures are different and there is something significant
13 about that difference --
14 MR. DAVID: Yes.
15 CHAIRMAN JACKSON: -- but you haven't said yet.
16 MR. DAVID: I don't know that there is any
17 significant difference in the test procedures, but the lead
18 time has changed tremendously.
19 CHAIRMAN JACKSON: So the basis of your contention
20 for making this argument that it's new is the earlier day
21 when the standards will be applicable.
22 MR. DAVID: The standards are applicable on a date
23 different than before they were revised.
24 CHAIRMAN JACKSON: It's the lead time. You just
25 don't have the same amount of lead time now that you had
26 before?
27 MR. DAVID: That's true.
28 CHAIRMAN JACKSON: Even though you still don't know

1 whether you can meet the one-gram standard at all?
2 MR. DAVID: We don't think so.
3 CHAIRMAN JACKSON: But at least the lead time's
4 been cut down according to your view of the newly adopted
5 California procedures?
6 MR. DAVID: Yes. I don't know how you can slice it
7 any other way.
8 CHAIRMAN JACKSON: And you, I think, have extended it
9 to something like eight months, is that it?
10 MR. DAVID: Our model year begins in May, our model
11 year production for the following model year.
12 MR. GRAY: Are you opposed to EPA revoking the
13 existing California waiver for the HC standard?
14 MR. DAVID: We would support EPA revoking the entire
15 waiver to California as far as any motorcycle emission
16 standards. I think it's against the public interest. It's
17 overkill, and that's the best way I can explain it.
18 California adopted their standards to make sure EPA
19 would. EPA did. We really think the waiver should be
20 revoked. We expected California to drop the regulations far
21 before then.
22 MR. GRAY: I can appreciate your broad answer but,
23 you know, the specific question I want to follow up with is
24 why relative to what we are considering here?
25 MR. DAVID: I think in our testimony we made it
26 very clear. California fails to continue to comply with
27 conditions of that waiver. Their '78 through '81 standards
28 do not meet the requirements of Section 209(b).

1 MR. GRAY: How about the 1982?

2 MR. DAVID: The 1982 standards, we honestly believe
3 that it's not feasible, that it's infeasible from a tech-
4 nological standpoint. I don't know how -- we believe that
5 waiver should be revoked. It should not have been granted in
6 the first place.

7 MR. GRAY: Well, is it more stringent somehow by
8 the federal test procedures than it is by the test procedures
9 that California would use under the present waiver? What
10 would be the specific basis that can be considered here? I
11 mean revisiting the technology issue seems like a separate --

12 MR. DAVID: Well, it's moved in effective date
13 which varies by manufacturer. In our case, it's about eight
14 months earlier. That is one specific point that we can
15 actually say has changed.

16 MR. GRAY: Well, seems like the different effective
17 date is the result of a separate action. That's a result of
18 California adopting the federal test procedures, compliance
19 strategy in total. That's where this model year lead time
20 issue came up. I mean it goes away if they retain their
21 existing strategy.

22 So I guess, you know, more specifically, relative to
23 the waiver they have now, under what basis should the federal
24 government revoke that waiver for 1982? What would be the
25 argument that would support it?

26 MR. DAVID: Well, I think the argument would be
27 that insufficient lead time exists to develop the technology
28 necessary to comply with the one-gram per kilometer standard.

1 CHAIRMAN JACKSON: We have already dealt with that.
2 MR. DAVID: We know that you have already dealt with
3 that.
4 MR. GRAY: So nothing --
5 MR. DAVID: It's our position hasn't changed.
6 MR. JOHNSON: Just for the record, I think we do
7 take the position that EPA is required to deal with it again
8 as a result of California's recent action, just so that we are
9 communicating correctly on that.
10 In other words, the one-gram standard in '82, we
11 feel must be reconsidered by EPA as it was back in the Summer
12 months of last year.
13 CHAIRMAN JACKSON: Let me get it clear. You are
14 basing this on the change in model year introduction appli-
15 cability?
16 MR. JOHNSON: Yes, sir.
17 MR. DAVID: I think that's the major change.
18 CHAIRMAN JACKSON: Okay.
19 MR. DAVID: The changes in the test procedures, we
20 have not analyzed those to the point where we could make an
21 informed judgment.
22 CHAIRMAN JACKSON: So they can't be the basis for
23 your position here?
24 MR. DAVID: No.
25 CHAIRMAN JACKSON: Okay.
26 MR. DAVID: The fact is that California received a
27 waiver for it which no longer exists.
28 CHAIRMAN JACKSON: And now you want us to reconsider

1 whether or not it is a new standard by virtue of that. Now,
2 how about on your side: what measures can you take to extend
3 your production year until December 31st, 1981?
4 MR. DAVID: I don't think we can take any measures
5 to extend our production year to the end of the year.
6 CHAIRMAN JACKSON: Why?
7 MR. DAVID: Well, there are really probably two
8 reasons, and I haven't thought this all through yet. I think
9 in the same vein that the other manufacturers have testified
10 to. And I would amplify that and say that we are, by com-
11 petitive position and the expectations of the marketplace,
12 locked into providing the next model year vehicles very
13 early in the calendar year. In fact, in almost all cases,
14 those vehicles are available in the late Fall of the preceding
15 year. This is common practice and typical and would be
16 unacceptable to the marketplace if it didn't occur that way.
17 CHAIRMAN JACKSON: Even less unacceptable than not
18 having them on there at all?
19 MR. DAVID: That's a speculative question.
20 CHAIRMAN JACKSON: Well, I think it's all speculative.
21 That's the point. That's why I am going into this.
22 MR. DAVID: If I were to speculate on that point,
23 I would have to say that it would be better to have some
24 motorcycles than no motorcycles.
25 CHAIRMAN JACKSON: Even if they were late. Okay.
26 MR. DAVID: What can I say? It's always better to
27 have something than nothing.
28 CHAIRMAN JACKSON: I'm glad you agree.

1 MR. DAVID: I think one of the other things that
2 might relate to that point, and I haven't thought it through,
3 is that EPA regulations are five model years, and once those
4 have been fixed, they are fixed.
5 CHAIRMAN JACKSON: It's up to you, though, to
6 initiate your Job 1 date, and that's at your election.
7 MR. DAVID: It's an annual production period. It
8 can't be more than one year.
9 CHAIRMAN JACKSON: Absolutely. We are not saying it
10 should be any more than one year. We are just saying it
11 could start on January 1, 1982. And if your basis, if your
12 contention for stating that there is something different here
13 that should be considered to do, it seems like you would be
14 prepared to tell us what kind of implications that has to you
15 as a corporation as opposed to speculating about it. I mean
16 if you can show us why that's significant as opposed to why I
17 shouldn't just say move your introduction date, everybody
18 else is going to be doing it, it's not a competitive issue
19 because, if we stick with it like it is, we have already had
20 some other manufacturers testify that they are going to have
21 to do the same thing, they got the same problem.
22 So it's not a competitive issue because we are
23 talking about the marketplace being affected by the same
24 problem.
25 MR. DAVID: Well, it was our understanding that
26 the purpose of today's hearing was to consider whether the
27 consideration of the October waiver is still valid and if that
28 waiver should remain in effect, and that waiver was granted for

1 a specific regulation which has been amended. The regulations
2 for which the waiver was granted no longer exist. It's a
3 new regulation. It's a different regulation by implementation
4 date and test procedure. And that change, we believe, should
5 cause EPA to reevaluate. In fact, the word isn't "reevaluate."
6 You must make a determination on the technological feasibility,
7 giving the appropriate consideration to courses under Section
8 209(b).
9 CHAIRMAN JACKSON: Wait a minute. I would still like
10 to know what are the practical implications of this change to
11 the corporation other than the fact that it's not business
12 as usual? I mean you are making a case for -- for saying it's
13 new. There has been precedent in the past where we have said
14 changes to existing waivers are minutia covered within the
15 waiver previously granted, and we could look at this under
16 that context. Unless you can come forward and say it's not
17 minutia, look at the impact here that we are talking about with
18 regard to the corporation and what's going to happen to it.
19 Now, you tell me that it's an eight-month lead time
20 that you are not going to have --
21 MR. DAVID: Right.
22 CHAIRMAN JACKSON: -- but it's by your own choosing.
23 MR. DAVID: Not by our own choosing. We are locked
24 into it by the way we build motorcycles.
25 CHAIRMAN JACKSON: That's business as usual. Here
26 we are talking about the implications of the change, what are
27 the implications of having to do business according to the way
28 you have to do business so you can sell cycles in '82.

1 MR. JOHNSON: Mr. Jackson, to properly address your
2 question, it's going to require us to communicate with a number
3 of people that aren't here today. And I appreciate the
4 thrust of your question. We will respond to it by June 10th in
5 a communication once we have our facts assembled.
6 CHAIRMAN JACKSON: I think that may be most
7 appropriate in some sort of detail where we can understand
8 the significance of what it is you claim to be a problem with
9 regard to the lack of lead time for the '82 models.
10 MR. JOHNSON: We will do that.
11 MR. GRAY: I'm a little bit confused about the
12 various issues that we may be jumping around to try to cover
13 here.
14 It appears to me that there is a basic subject that
15 was announced in the hearing notice. That is that, as a
16 result of EPA action establishing federal motorcycle emission
17 standards, EPA intends to consider whether California
18 continues to comply with the conditions of the October 1st,
19 1976, waiver, from the hearing notice.
20 MR. DAVID: Yes.
21 MR. GRAY: That's one issue.
22 Another issue is California has adopted new
23 regulations, to use your terminology --
24 MR. DAVID: Yes.
25 MR. GRAY: -- which puts forth a new requirement.
26 That's another subject.
27 If we can try to keep the question constrained just
28 to the reconsideration of the existing California waiver, why

1 should EPA revoke that waiver for 1982?

2 MR. DAVID: Those regulations aren't there anymore.

3 They don't exist.

4 MR. GRAY: As far as the California waiver, you know,

5 at one time you argued that the California regulation doesn't

6 exist until it's a federal waiver. And here you are arguing

7 that the federal waiver has been preempted because of a

8 California action. I think by the very notice that we put

9 forth in the Federal Register that EPA intends to consider

10 whether California continues to comply with that requirement.

11 MR. DAVID: I think the requirements that you

12 mentioned are contained in Section 209(b) of the Act, and we

13 do not believe that the California regulations, as amended,

14 continue to comply with the requirements of Section 209(b) and,

15 therefore, the conditions of the October 1st, 1976, waiver are

16 not met.

17 MR. GRAY: As a result of the federal government

18 establishing motorcycle emissions standards?

19 MR. DAVID: That's part of it.

20 MR. GRAY: What changed with respect to the

21 California waiver that should compel the EPA to revoke the

22 waiver for 1982? Anything?

23 MR. DAVID: Lead time changed.

24 MR. GRAY: Not with respect to the waiver. I mean

25 that's why I wanted to separate the two. I mean what aspect?

26 The only -- it can be argued that the new test procedures,

27 the federal test procedures somehow --

28 MR. DAVID: Well, I think --

1 MR. GRAY: Well, you wouldn't even have to argue
2 that. I guess the only thing I can conceive of is the fact
3 that a requirement of a 12-gram CO on top of the one-gram
4 HC level might now be -- result in the existing waiver being
5 superseded by something more stringent and, therefore, there
6 would have to be a new finding on technological feasibility.
7 So I'm just putting it forth. What basis is there
8 that EPA would have to revoke that existing waiver?
9 MR. DAVID: I'm not quite sure I understand how you
10 relate the one and 12 grams together. You are saying is a
11 one hydrocarbon and a 12 CO more severe than one hydrocarbon by
12 itself?
13 MR. GRAY: I'm simply asking what consequence of the
14 federal action should necessitate the federal government
15 revoking the existing California waiver relative to 1982?
16 MR. JOHNSON: Perhaps I can be of some assistance.
17 With regard to 1978 through '81, we don't believe
18 the conditions are the same anymore as a result of what
19 happened in March of this year, i.e., the same standards are
20 no longer in force as far as California is concerned.
21 With regard to 1982, we don't believe -- we believe
22 that a new standard has also been adopted as we have already
23 testified on the lead time, on a lead time problem, and,
24 therefore, we don't think that condition that existed in
25 October now exists.
26 But it's a result of the action taken by the Air
27 Resources Board in each case.
28 CHAIRMAN JACKSON: Maybe I can share this conversation

1 with you. We are talking about the concept of waiver in some-
2 what different terms than we have sort of been communicating
3 back and forth here with you and that the -- we gave
4 California a waiver which said you can do these things.
5 MR. DAVID: Yes.
6 CHAIRMAN JACKSON: Okay. And whether they do it or
7 not is up to them.
8 MR. DAVID: Yes.
9 CHAIRMAN JACKSON: Okay. But if they ever choose
10 to do that, they can do it, because we made certain findings
11 with regard to the 1982 model year. And if they should
12 choose to do it, then the authority for them to do it is
13 there.
14 Okay. So that's one issue.
15 MR. DAVID: Yes.
16 CHAIRMAN JACKSON: They do have a waiver. And
17 what Mr. Gray was getting at here is what's changed that
18 would say that they don't have that waiver anymore. We made
19 certain findings with regard to that program.
20 Now, what you are saying is well, they have changed
21 that program and now you have got to go back and look at it
22 again to decide whether or not they still should have a waiver
23 in the context of the changed program, right?
24 MR. DAVID: Two things have happened. That's
25 all. EPA adopted regulations. California amended theirs.
26 Other changes would have to be internal to the industry, or
27 in the US marketplace, or whatever.
28 CHAIRMAN JACKSON: But the only thing that's really

1 at issue, the only thing that's really changed, is the federal
2 government went in and promulgated regulations. With regard
3 to those things that applied that the federal government took
4 under consideration when it granted the waiver, none of those
5 things have changed: stringency, technological feasibility.
6 We said if you want to have those standards in 1982, you can.
7 MR. DAVID: I think there have been some things that
8 have changed. I think for one thing, the Environmental
9 Protection Agency has entered into a contract to decide
10 technological feasibility questions with the Southwest Research
11 Institute. There will be some additional information forth-
12 coming, already is forthcoming, that's different from what
13 existed in October.
14 I don't know if that's one of the changes that you
15 would suggest here. I'm not quite sure.
16 MR. JOHNSON: One of the changes obviously is that
17 EPA has adopted its own regulations.
18 MR. GRAY: Yes.
19 MR. JOHNSON: That's changed. Also what's changed
20 is back in October, if my understanding is correct, you decided
21 that California's standards, its old standards, were more
22 stringent than federal standards, and there were none.
23 Now, California has taken those old standards and
24 put those on the shelf and has said now we have EPA's
25 standards. I'm talking about '78 through '81, and that
26 condition changes the validity, in quotes, of the waiver that
27 was granted back in October.
28 CHAIRMAN JACKSON: And we grant you that. But

1 that's the point Mr. Gray was making. What aspect of the
2 federal action was there that applied to the 1982 standards?
3 MR. DAVID: The 1980 model year and subsequent
4 regulations also apply to 1982. Those include five grams per
5 kilometer, a 12-gram per kilometer CO standard. That's why
6 I was a little confused. You kept talking one and 12, and
7 I can't put those two together.
8 CHAIRMAN JACKSON: You have to meet both standards.
9 MR. DAVID: You have to meet the five and the 12 at
10 the same time for EPA.
11 CHAIRMAN JACKSON: You have to meet a five and 12
12 with a bike that meets one.
13 MR. DAVID: Okay.
14 CHAIRMAN JACKSON: That's the way it goes. In
15 other words, the federal standards umbrella the California
16 program.
17 MR. DAVID: Yes. Okay. I think I would like to
18 reserve judgment on whether a five and 12 in combination is
19 less or more stringent or equal in stringency to the one-gram
20 per kilometer; is that right?
21 CHAIRMAN JACKSON: That's not the question.
22 MR. DAVID: Well, that's one of the things that
23 has changed, that would change the reading.
24 CHAIRMAN JACKSON: We are talking about one bike --
25 MR. DAVID: Yes.
26 CHAIRMAN JACKSON: -- that has got to meet --
27 MR. DAVID: I understand.
28 CHAIRMAN JACKSON: -- the one --

1 MR. DAVID: As well as the 12.

2 CHAIRMAN JACKSON: -- as well as the 12 because
3 that's what the feds did. They came in and changed things
4 for 1982.

5 MR. DAVID: Right.

6 CHAIRMAN JACKSON: And if you are coming to us and
7 saying meeting that 12 in combination with that one changes
8 the conditions under which that waiver was granted, then we
9 would have an issue with regard to that waiver, and it's
10 granting authority for California to do something.

11 MR. DAVID: Yes. I don't know the answer to that
12 question, but I will find out and have it to you by June 10th.
13 I really don't know the answer to that question.

14 I think that one of the things that has happened,
15 though, and I think that this should be considered from a
16 policy standpoint, and this is that the motivation for EPA's
17 regulations are the major urban areas of the United States.
18 It is the cause of EPA's regulations. That is the need
19 which dictated national emissions standards for motorcycles.
20 EPA's regulations are in answer to that need.

21 MR. GRAY: Would you support a situation where,
22 especially considering the situation where you are right now,
23 wherein the CARB adopted the federal procedures, tests,
24 compliance, the whole regulatory program, but the applicability
25 of those standards was unchanged from their existing standard,
26 waived standard.

27 MR. DAVID: Would you repeat that? Would I support
28 it?

1 MR. GRAY: Would you support -- The current
2 situation is that California has a waiver for a one-gram
3 HC standard --
4 MR. DAVID: Right.
5 MR. GRAY: -- in 1982 by the test procedures that
6 involve, among other things, useful life testing and durability
7 emission data vehicles, bikes.
8 MR. DAVID: 220 ARB test procedures, not the current
9 ones, what they got in October?
10 MR. GRAY: What they have already got is what we are
11 dealing with here. That's what they have the authority to
12 enforce.
13 MR. DAVID: Okay.
14 MR. GRAY: That being the situation now, and we
15 say is that -- you know, can there be a better situation
16 within those constraints? Let's say would that situation be
17 the federal test procedures and compliance procedures with
18 the compliance date the same as it was in the existing waiver,
19 that is January 1, 1982.
20 MR. DAVID: We will have to speculate in that whole
21 area because the one-gram per kilometer standard looks like
22 an impossibility to us.
23 MR. GRAY: Well, that's why I wanted to say within
24 the constraints of getting something constructive out of what
25 we are dealing with today.
26 MR. DAVID: I think it should be obvious that the
27 development work that EPA did in Ann Arbor to develop the
28 final test procedures which were published in January did

1 improve those test procedures so that they would fit motor-
2 cycle testing a lot better than the old draft, which is the
3 220 '76 CARB regulation.
4 So I can, from that standpoint, just purely from
5 the technical standpoint, EPA's, or the federal test procedures,
6 are more appropriate. In fact, from a technological stand-
7 point, are more accurate than the original working draft.
8 MR. GRAY: Then as far as you --
9 MR. DAVID: As far as the effective date goes, it
10 makes a difference to our company of about eight months.
11 MR. GRAY: All right.
12 MR. DAVID: So given the assumption that the one-
13 gram per kilometer standard is feasible, which we don't believe
14 that it is, yes, I would agree with that.
15 MR. GRAY: But you could not see any technical
16 constraint that would make that -- that would be worth not
17 granting such a revised waiver, if you will? In other words,
18 if California requested a waiver for a revised program which
19 was revised with the federal procedures and the applicability
20 beginning with the beginning of 1982, would you support that
21 particular kind of a revised waiver as opposed to the current
22 situation?
23 MR. DAVID: You mean effective on the same old date,
24 the old January 1st, 1982, production?
25 MR. GRAY: Yeah. It seems like that California
26 came forward here with a mood to help out the motorcycle
27 industry, the certifying agencies, and the extent that they
28 took the initiative to say, "Okay. Let's have one compliance

1 program, one methodology, but we don't want to -- you know,
2 this should not be a reflection upon the standard that we have,
3 i.e., that it should not result in us having to have a new
4 waiver, if you will, can you see any way that there is -- that
5 it could be more technically difficult to meet the one-gram
6 HC standard with the existing situation using the federal
7 test procedures and the old applicability data?
8 MR. DAVID: Boy, that's a hard one to answer because
9 I don't know what the difference in test procedures makes in
10 the -- the difference in testing a vehicle because we never
11 dealt with EPA's working draft or the ARB test procedures. I
12 don't know anyone that's tested a motorcycle under the old
13 procedures, except perhaps EPA in-house.
14 So our history in that area is very weak. We would
15 have to actually sit down and take a look at the CARB's pre-
16 March 24 test procedure versus -- you know, rate those up
17 against EPA's current test procedures, which are the federal
18 test procedures, to see which one is more stringent.
19 I would suspect that EPA's test procedures, from a
20 technological standpoint, are more accurate and more appropri-
21 ate, tailored to fit motorcycle operation closer. All the
22 development work between EPA's working draft and this final
23 regulation is in those final regulations.
24 But I would like to submit further information on
25 that point if I could. To my knowledge, no one has ever
26 tested a motorcycle using ARB's draft -- ARB's regulations as
27 they existed February 20th, '76.
28 MR. GRAY: If these are among the possibilities as a

1 result of these hearings, one, to not revoke the existing
2 waiver; two, accept a revised or issue a revised waiver as
3 requested by the California Air Resources Board, which would
4 include the revised compliance date, or perhaps a third option,
5 which would be a revised waiver with the old compliance date,
6 are there other ways that we could come out in these hearings
7 that would be reasonable?
8 MR. DAVID: We like Option 1, revoke the waiver.
9 MR. JOHNSON: Did you say revoke the waiver?
10 MR. GRAY: I retained the waiver in the first
11 instance.
12 MR. DAVID: I thought you said revoke the waiver.
13 MR. GRAY: I may have.
14 MR. JOHNSON: And you are talking solely about a
15 waiver for 1982?
16 MR. GRAY: Yes. I mean setting aside the issue of
17 whether or not the standards are more stringent and the
18 different test procedures or whether the standards are so
19 similar, since there is not a comparable HC standard to the
20 1982 California HC standard, it appears that there are several
21 options, I guess, that could result after these hearings.
22 One is to leave the waiver as it is, retain that
23 waiver because it's already been granted.
24 Two. Revise it as requested by the California Air
25 Resources Board, which would include a revised implementation
26 date, or
27 Three. I would think it reasonable to revise the
28 waiver similar to the request by the CARB, but not change the

1 implementation date and set infringes upon the area of
2 technological feasiblity.
3 And I guess to the extent EPA can make the finding
4 that it's feasible, a second option is very real, but I mean
5 is there any of those that you can say you would support? Is
6 there anything that --
7 MR. DAVID: Support? Well --
8 MR. GRAY: You are opposed to all three of those?
9 MR. DAVID: We think you should revoke the waiver.
10 We think that EPA should regulate motorcycles, not CARB.
11 That's the thing.
12 MR. GRAY: I don't see how that's something we can
13 consider here relative to the --
14 MR. DAVID: Yes.
15 MR. GRAY: -- constraints of these hearings. That's
16 why I am trying to focus the discussion to something we can
17 deal with within those constraints.
18 MR. JOHNSON: Another option you have, however, is
19 to revoke the waiver in its entirety. That's one option that
20 we see, and we see it as acceptable.
21 But all three of the options you referred to impose
22 a standard by 1982 with our present knowledge we consider
23 technologically infeasible. So I don't know how we choose
24 between which way we want to go out of business, assuming that
25 it continues that way.
26 MR. DAVID: I guess what we would say is that EPA
27 designed its control program to satisfy California,
28 specifically Los Angeles' air pollution problem caused by

1 motorcycles. Those circumstances are sufficient to satisfy
2 the compelling and extraordinary need in California for regu-
3 lation of motorcycles.
4 Since EPA designed its program, its program was
5 motivated by that requirement. Anything more severe than that
6 is a conclusion that I can't reach logically in my head, and
7 I'm at a loss as to where to go with that particular feeling.
8 I would like to submit further information regarding
9 the lead time question, which is the effective date of the
10 regulation, the changes which the test procedure made to that,
11 and also the question of having a CO and HC standard as
12 opposed to having just an HC standard or having a five and
13 12 standard and then seeing a one-gram standard come in.
14 We have not addressed that subject here, and I would like to
15 address that in writing before June 10th.
16 MR. GRAY: Among the three options at least that I
17 discussed, do you have a preference, if we can't go beyond the
18 constraints of these hearings, which is a real possibility?
19 MR. DAVID: I think I would take -- If I had to
20 select from any three of those things, which are all
21 unacceptable to us, I would probably select the circumstance
22 where you would revise the waiver which would require you to
23 make a new determination of cost-effectiveness, whatever.
24 To revise the waiver, you have to make a determination. You
25 can't just revise it. There's got to be a justification,
26 logic and rationale employed and --
27 CHAIRMAN JACKSON: Says according to what?
28 MR. DAVID: Pardon me?

1 CHAIRMAN JACKSON: According to what?

2 MR. DAVID: It says the Administrator shall determine
3 in Section 209 of the Act. It doesn't say he shall revise.
4 He needs to make a determination of what's happening. So I
5 think if you were to use the word "revise" the waiver, we
6 would think that that statement means that you would have to
7 make a revised determination also.

8 And so of those three unacceptable solutions,
9 obviously the one where you would revise it, and at least take
10 a look at it again to determine if it is worthwhile, that
11 would be our preferred unacceptable solution, especially where
12 you are picking up the EPA's final test procedures and
13 implementation date.

14 MR. GRAY: If there was nothing that is changed
15 relative to the constraints of the hearing process that would
16 impact upon the findings made earlier, then it appears beyond
17 the scope of the hearings to consider revoking the waiver or
18 to make those findings anew. That's why we are trying to
19 focus the discussion on what can we do within those constraints
20 that is more meaningful than the situation we have now.

21 And instead of a lot of confusion resulting after
22 these hearings, seemed like it would be in the best interests
23 of the motorcycle manufacturers, CARB and EPA to at least
24 cover the ground we can that we would all consider as
25 reasonable.

26 MR. DAVID: Well, I think, Mr. Gray, there is no
27 question in my mind that the '78 to '81 standards, as the
28 waiver applies to those standards, should be revoked in total.

1 Regarding the 1982 standard, we have previously
2 testified that it's not technically feasible, but the testimony
3 of one manufacturer, Kawasaki, was not used in the administra-
4 tive determination. We would like to provide further
5 information on that regarding the impact that change in
6 effective date would have on our company. We would like to
7 analyze the test procedures, the old California test pro-
8 cedures and the final EPA regulations, to find out if there
9 is any significant differences in those test procedures.
10 The determination of technological feasibility of
11 that one-gram per kilometer standard was essentially EPA.
12 What can I say? I would like to provide more information to
13 you. That information is not here with us today. I don't
14 have that in my head. I don't know the differences between
15 those two test procedures. I have never worked -- We have
16 never dealt with the working draft EPA test procedure, but
17 would like to reserve the right to be able to take a hard
18 look at it, analyze it very thoroughly, and submit our
19 comments on that particular item as well as the combination
20 standards interreaction and also the effective date change
21 in the California '82 standard.
22 CHAIRMAN JACKSON: Thank you very much.
23 MR. DAVID: Thank you.
24 CHAIRMAN JACKSON: Mr. Walsh?
25 MR. JOHN WALSH: Thank you.
26 Good evening. My name is John Walsh, and I am
27 here representing Suzuki Motor Company.
28 Suzuki Motor Company would like to offer the

1 following comments to EPA's reconsideration of the October 1,
2 1976, waiver of federal preemption of California exhaust
3 emission standards and test procedures for motorcycles.
4 Since October 1, 1976, there have been two signifi-
5 cant changes in the motorcycle exhaust emission control area.
6 First, the Environmental Protection Agency promul-
7 gated hydrocarbon and carbon monoxide exhaust emission
8 standards for motorcycles.
9 Second, the California Air Resources Board amended
10 California's motorcycle exhaust emission regulations, adopting
11 the EPA hydrocarbon limits for 1978 through 1981 model year
12 motorcycles while maintaining a 1.0g/km standard applicable
13 to 1982 model year motorcycles. The ARB also adopted the EPA
14 test procedures for motorcycle emission testing.
15 Suzuki believes, based on these actions by EPA and
16 ARB, that the October 1, 1976 waiver must be reconsidered.
17 The ARB has adopted the EPA hydrocarbon standards
18 and test procedures for the 1978-1981 model years. ARB did not
19 adopt EPA's CO standards for these model years. Because of
20 this, ARB's standards and test procedures are less stringent
21 than the EPA regulations. ARB wants to receive copies of Part
22 I and Part II applications and EPA Certificates of Conformity.
23 EPA has review authority in this area so this part of the
24 ARB program does not add any stringency to the ARB program.
25 ARB also wants to retain authority to perform compliance
26 testing of motorcycles. ARB might argue that this increases
27 the risk that motorcycle manufacturers would be caught selling
28 non-complying motorcycles and thus manufacturers would use

1 better quality control measures to reduce emissions so this
2 would make ARB's program more stringent. This argument is not
3 persuasive for two reasons:
4 First, the manufacturers are already required to meet
5 the emissions standards, and will use strict quality control to
6 keep the motorcycles below the limits; and
7 Second, ARB could perform testing at any time and
8 report the results to EPA for EPA enforcement action.
9 In either case, ARB's enforcement authority will not
10 result in lower motorcycle exhaust emissions in California.
11 Air Resources Board Chairman Quinn stated at the
12 24 March 1977 public hearing that ARB has no intention of
13 merely duplicating EPA enforcement action. Mr. Quinn stated
14 that ARB has been dissatisfied with EPA enforcement action
15 in the past. While we can understand Mr. Quinn's concern that
16 only complying vehicles are sold in California, Congress did
17 not give ARB the authority to review EPA enforcement action.
18 Congress, and Congress only, can review EPA's enforcement
19 activities and direct the Administrator to take specified
20 actions. The Air Resources Board should appeal to Congress
21 if they feel more EPA enforcement action is necessary;
22 development and implementation of an ARB enforcement program
23 just because of ARB dissatisfaction with EPA is both unwise,
24 because the EPA program exists, and not permitted under the
25 Clean Air Act unless California has a more stringent emission
26 control program for the source in question.
27 Overall, the ARB program for 1978-1981 model year
28 motorcycles is less stringent in the emission standards chosen

1 and the review and enforcement authority sought by ARB will
2 not reduce emissions in California, and not add any stringency
3 to the ARB program. If ARB is permitted to maintain an
4 emissions program which is merely parallel to EPA's, the
5 manufacturers will be forced to waste time and effort dealing
6 with a duplicative California program, and the consumers will
7 be forced to bear this cost.
8 At the ARB meeting of 24 March, the Board changed
9 the effective date of the 1.0 g/km standard from the 1982
10 production year to the 1982 model year. In effect, this is
11 about a nine month reduction in lead time to meet the 1.0
12 g/km standard.
13 Almost one year has passed since the EPA waiver
14 hearing in 1976. In this year, no significant advances have
15 been made which indicate that Suzuki would be able to meet the
16 1.0 g/km HC standard for its 1982 model year motorcycles.
17 Perhaps a review of Suzuki's situation would help
18 to show that a 1.0 g/km HC standard for 1982 model year
19 motorcycles is not consistent with Section 202(a) of the
20 Clean Air Act, and that federal preemption of California's
21 standards therefore cannot be waived.
22 Suzuki is currently in the process of certifying
23 our 1978 model year motorcycles produced on and after
24 January 1, 1978. We will meet these standards by a combina-
25 tion of engine modifications for some two-stroke models and
26 conversion to four-stroke for other models. In order to meet
27 the 1980 model year emission standards, conversion of more
28 models to four-stroke engine designs will be required. We

1 estimate that this conversion would not be completed until
2 after April 1979, and might not be completed until August
3 or September of 1979.
4 Even if conversion is completed by April 1979 for
5 our 1980 models, this leaves only slightly more than one year,
6 until June 1980, to complete research and development to meet
7 the 1982 model year standard of 1.0 g/km. Research and
8 development for 1982 models must be completed by June 1980 to
9 allow for certification of 1982 models to be completed by
10 April 1981, when 1982 model production will begin. For Suzuki
11 to meet a 1.0 g/km standard, this will require conversion of
12 all models to a four-stroke engine design.
13 Clearly, it will be impossible for Suzuki to convert
14 the rest of its product line to four-stroke engine designs
15 between April 1979 and April 1981, considering the engineering
16 which is involved in designing new motorcycle models, con-
17 sidering the additional engineering required for exhaust
18 aftertreatment and/or other additional emission control tech-
19 nology required in addition to four-stroke conversion, and
20 considering the great cost involved for conversion of models
21 to four-stroke designs. Suzuki is only now becoming familiar
22 with four-stroke emission control technology, having only
23 recently started producing four-stroke motorcycles.
24 The problem of meeting a 1.0 g/km HC standard for
25 the 1982 model year is not only a problem of unavailability of
26 technology to Suzuki within the remaining three year lead time,
27 but also a problem of unavailability of engineers to work on
28 these programs. In addition to four-stroke conversion and

1 four-stroke emission control programs, we have recently
2 embarked on a motorcycle evaporative emission control study
3 program and a fuel fill pipe specification program due to
4 recent actions by the California Air Resources Board.
5 Expected action by the U. S. Environmental Protection Agency
6 regarding motorcycle sound level control will place addi-
7 tional major demands on our engineering staff in the same
8 time frame as the 1980 and 1982 emission standards. Our
9 staff will find this burden especiallydifficult not only
10 because of the workload burden but also because of the
11 adverse interaction between emission control technology and
12 sound level control technology.
13 Regulation-related engineering requirements have
14 expanded so greatly and rapidly within the past several years
15 that Suzuki is, quite frankly, overloaded with engineering
16 work. We need more engineers, but our engineers who have
17 been recently assigned to those programs have only limited
18 experience in emission control or sound control problems,
19 and new engineers, like recently reassigned engineers, are
20 limited in availability, and in experience in these areas.
21 In summary, Suzuki cannot meet a 1.0 g/km HC
22 standard for 1982 model year motorcycles taking into account
23 the time necessary for research and development of the
24 technology necessary for us to fulfill market demand for 1982
25 model year Suzuki motorcycles in California, taking into
26 account the cost of compliance.
27 At the Air Resources Board public hearing of
28 24 March 1977, the Board adopted the EPA test procedures to

1 determine compliance with their HC limits. Section 1958(f)
2 of the amended Title 13, California Administrative Code,
3 provides, however, that if all or part of the EPA test
4 procedures are found to be invalid or unenforceable, then the
5 1976 California test procedures shall be used to determine
6 compliance. This Section 1958(f) creates the possibility
7 that all of the mileage accumulation and emission data testing
8 for California motorcycles might be made invalid in the middle
9 or near the end of such testing. This could occur if part of
10 the EPA test procedure is ruled invalid and testing must be
11 redone using the California procedures. Clearly, such a risk
12 is not consistent with Section 202(a) when "... giving
13 appropriate consideration to the cost of compliance...". The
14 cost of compliance could be as expected, or could be much
15 higher if massive retesting is required by a test procedure
16 change.
17 The October 1 waiver must also be reconsidered in
18 its application to ARB's previous HC standards of 10, 5, and
19 1.0 g/km. The 10 g/km standard for 1978-1979 model motor-
20 cycles is less stringent than applicable federal standards.
21 The five g/km standard for 1980-1981 model motorcycles is
22 identical to the applicable federal HC standard, but is less
23 stringent than the applicable federal regulations of both
24 HC and CO. The waiver for the 1.0 g/km standard for 1982
25 and later model motorcycles must be withdrawn because, as
26 discussed earlier, it is not consistent with Section 202(a)
27 of the Clean Air Act. The entire October 1, 1976 waiver must
28 be withdrawn since the Administrator's finding No. 2 can no

1 longer be made for the 1978-1981 standards and finding No. 4
2 can no longer be made for the 1982 standard.
3 In closing, Suzuki feels the October 1, 1976 waiver
4 must be withdrawn since the requisite findings can no longer
5 be made. Suzuki further believes that the existing waiver
6 cannot be modified, and no new waiver can be granted, to
7 waive preemption for the 1978-1981 standards because the
8 California standards are less stringent than applicable
9 federal standards. We feel that the existing waiver cannot
10 be modified, and no new waiver can be granted, for the 1982
11 and later model year standards at least for the 1982 model
12 year because this standard is not consistent with Section
13 202(a) of the Clean Air Act. Finally, we feel that the
14 existing waiver cannot be modified, and no new waiver can be
15 granted, for the entire California program because Section
16 1958(f) of Title 13, California Administrative Code, makes
17 the California program inconsistentwith Section 202(a) of the
18 Clean Air Act.
19 Thank you. I would be happy to answer any
20 questions that you might have, or ask our staff to supply
21 any information that might be helpful.
22 MR. GRAY: Would you try stating in somewhat
23 different words the basis of your recommendation that the
24 existing waiver for California for the '82 standard should be
25 withdrawn?
26 MR. WALSH: What different words would you like me
27 to use?
28 MR. GRAY: You said it cannot be made. Would you

1 explain why it cannot be made?

2 MR. WALSH: The findings required under Section

3 209?

4 MR. GRAY: With respect to the constraints, you know,

5 of these hearings, yes.

6 MR. WALSH: For the 1982 model year standard?

7 MR. GRAY: Yes, with respect to the changes that

8 have occurred since that time that would impact upon whether

9 that waiver stays in effect or is revoked, what basis is there

10 to suggest that waiver should be revoked?

11 MR. WALSH: Okay. This is for the one-gram

12 kilometer standard for 1982 model year motorcycles after

13 January 1st, 1982, production?

14 MR. GRAY: Yes.

15 MR. WALSH: Okay. Well, a year has gone by since

16 the last waiver hearing. In this time, Suzuki has made no

17 significant progress towards accelerating our compliance with

18 the one-gram standard. Since the time has passed, the time is

19 closer to implementation of such a program, and the Administra-

20 tor is closer -- can make a nearer-term finding that the

21 available technology does not exist within the lead time

22 remaining, taking into account the cost of compliance to make

23 that standard consistent with Section 202(a) of the Clean Air

24 Act.

25 MR. GRAY: Since such findings appear to be beyond

26 the factors we can consider here, is there anything else --

27 Those findings were made prior to October, 1976 and were the

28 basis of that waiver. Is there anything changed that would

1 make that decision improper at that time that we can consider
2 here?
3 MR. WALSH: Well, if the Administrator is going to
4 reconsider his October 1st, 1976, waiver, I think he certainly
5 could, and should, consider the available technology situation
6 as it exists at the time of the new determination.
7 MR. GRAY: I guess I'm -- I'm at least a bit con-
8 fused in regard to, once again, what we are trying to deal
9 with here. Has the adoption of federal regulations made some
10 aspect of the previous waiver more stringent?
11 MR. WALSH: With regard to 1982?
12 MR. GRAY: Yes.
13 MR. WALSH: No. My comments regarding reconsideration
14 of the 1982 waiver at this hearing are based on EPA's stated
15 intent of reconsidering this waiver. And so I thought the
16 Administrator would reconsider his waiver in the light of
17 available technology.
18 CHAIRMAN JACKSON: In the light of a federal action,
19 federal action being adoption of standards up to '81, which
20 were encompassed by, or that were paralleled by California
21 standards, and after '81 there was a standard on California
22 books that was different, and we didn't say that we were
23 reconsidering that one.
24 But it's only in light of the federal action. What
25 aspects of the federal action makes the 1982 standard require-
26 ment any different?
27 MR. WALSH: Okay. Well, this federal action, this
28 hearing, seems to me to open for reconsideration the validity

1 of the preexisting waiver for the 1982 production year
2 standard. And I thought the Administrator would want to take
3 the opportunity to reexamine the 1982 standard in light of the
4 situation as it currently exists.
5 If that is incorrect, then my comments are not
6 perfectly within line.
7 CHAIRMAN JACKSON: What we are looking for is some
8 more concrete indicia of a different situation that has been
9 created as a result of the federal action other than your
10 desire to ask the Administrator to reconsider anew the whole
11 issue of an '82 standard. What aspect of the federal action
12 has changed the situation with regard to the conditions under
13 which the waiver was granted to California for 1982 model year
14 standards?
15 MR. WALSH: Okay. Well, the waiver was granted
16 under the condition that the Administrator might review the
17 waiver once he promulgated federal regulations. He has pro-
18 mulgated federal regulations, and the time has come now to
19 reexamine the existing waiver.
20 CHAIRMAN JACKSON: Reexamine it from the point of
21 view is it still more stringent than applicable federal
22 requirements?
23 MR. WALSH: The 1982?
24 CHAIRMAN JACKSON: Yes.
25 MR. WALSH: The older 1982 standards?
26 CHAIRMAN JACKSON: Is the California program still
27 more stringent in 1982 than the recently promulgated federal
28 program?

1 MR. WALSH: Which California program? The 1982
2 production year standard or the 1982 --
3 CHAIRMAN JACKSON: The one-gram per kilometer.
4 MR. WALSH: It's more stringent in either case, but
5 there is a difference in the date of implementation.
6 CHAIRMAN JACKSON: Okay. Now, what argument are you
7 making with regard to the day of implementation?
8 MR. WALSH: It's lead time.
9 CHAIRMAN JACKSON: Is that a lead-time argument?
10 MR. WALSH: Especially with regard to those models
11 which could comply if the program was effective on a production
12 year basis. It's related to market demand as far as our
13 competitive position goes and being able to meet the standard.
14 It's related to the year of elapsed time since the last waiver
15 hearing as having no significant -- as there being no signifi-
16 cant technology developments in that time, and in being
17 related to the manufacturers marketing plans in the same way
18 as if the standard had been changed almost by a full model
19 year.
20 CHAIRMAN JACKSON: This questioning has proceeded
21 on this line. What has -- What impact would it be on
22 Suzuki to change its model year introduction date from normal
23 business to something that comports with the calendar year
24 requirement for 1982 standards?
25 MR. WALSH: Are you looking for a specific impact or
26 a general impact?
27 CHAIRMAN JACKSON: Whatever impact it is upon which
28 you base your contention that you have got a problem now that

1 you didn't have before?
2 MR. WALSH: There would be a significant problem that
3 we would have in offering a full line of motorcycles for sale,
4 1982 motorcycles for sale, in California, and that would affect
5 our competitive position.
6 CHAIRMAN JACKSON: Why? Everybody else is going to
7 be in the same situation.
8 MR. WALSH: I think it would be hasty to assume that
9 just because Harley-Davidson, Kawasaki, Yamaha and Suzuki might
10 be in that position, that everybody would be in that position.
11 CHAIRMAN JACKSON: Do you know of somebody that
12 won't be?
13 MR. WALSH: I don't work for anybody else.
14 CHAIRMAN JACKSON: I just asked you if you knew
15 there was anybody else in that position?
16 MR. WALSH: No, sir.
17 CHAIRMAN JACKSON: Well, you still haven't given me
18 anything that is very lucid on why you are going to have this
19 competitive problem and what economic effect it's going to
20 have, if any, on the corporation. In other words, if that's
21 the sole difference between the preexisting conditions with
22 regard to the California '82 standards and what they have now,
23 and there is some reason for that impact to be analyzed, you
24 should give us some information upon which we could make some
25 sort of a determination other than you believe that there will
26 be competitive impacts, or it will affect in some way your
27 offerability.
28 MR. WALSH: Okay. We suspect that it's foreseeable

1 that in the 1982 model year, if the ARB program as revised
2 went into effect that we would have competitors who would have
3 models available for which we had no competing model and that
4 these models -- and we would, therefore, lose that part of the
5 market for which we did not have models available.
6 CHAIRMAN JACKSON: Is that related to the 1982
7 standards and your inability to meet it with your full model
8 line, or is it related to the introduction date?
9 MR. WALSH: It's related to both, depending on the
10 model.
11 CHAIRMAN JACKSON: Would you tell me how it's
12 related to the introduction date?
13 MR. WALSH: In terms of the date at which a model
14 is introduced?
15 CHAIRMAN JACKSON: In terms of the difference
16 between the amended California procedures which requires the --
17 now requires the federal model year definition as opposed to
18 the previous definition that was calendar year?
19 MR. WALSH: Because we have limited production
20 capacity, there would be some 1982 models which we would
21 manufacture entirely in 1981 in all likelihood. If this was
22 the case, we would not plan a major change on January 1st,
23 1982, unless those models would be introduced complying with
24 five and 12 regulations of EPA and the five-gram standard of
25 ARB if a waiver is granted for that standard. If the ARB
26 program is changed strictly to a model year program, we would
27 not be able to introduce that model at all, and that could
28 impact us greatly.

1 CHAIRMAN JACKSON: Can you explain to us how that's
2 going to impact you some way or another, definitive way?
3 MR. WALSH: By lost sales to competitors.
4 CHAIRMAN JACKSON: That's sort of a speculative
5 kind of a thing, isn't it?
6 MR. WALSH: As speculative as meeting a one-gram
7 standard in 1982, I suppose.
8 CHAIRMAN JACKSON: Okay. Mr. Walsh, thank you very
9 much.
10 MR. WALSH: Thank you.
11 CHAIRMAN JACKSON: We will reconvene the hearing at
12 10:00 o'clock in the morning.
13 (Whereupon the hearing was recessed at the hour of
14 5:55 o'clock p.m.)
15 ---oOo---
16
17
18
19
20
21
22
23
24
25
26
27
28