

issues affecting EPA's previous authorization determination.<sup>11</sup>

In its request letter, CARB stated that the various amendments will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 209, CARB stated that the amendments (1) apply only to nonroad engines and vehicles and not to motor vehicles or engines, (2) apply only to those nonroad engines and vehicles which are not included in the preempted categories, and (3) do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA agrees with all CARB findings with regard to the provisions listed. Thus, EPA finds that these amendments are within the scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous authorizations, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by December 20, 2000, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(e) authorization determination and that EPA should reconsider its findings. Otherwise, these

procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1). Finally, and most importantly in terms of application to nonroad within the scope requests such as these, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.

<sup>11</sup> Decision Document for California Nonroad Engine Regulations Amendments, Dockets A-2000-05 to 08, entry V-B, p. 28.

findings shall become final on December 20, 2000.

Our decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. For this reason, we hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 19, 2001. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

EPA's determination that these California regulations are within the scope of prior authorizations by EPA does not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to Office of Management and Budget review.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: November 9, 2000.

**Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[AMS-FRL-6903-4]**

### **California State Nonroad Engine and Vehicle Pollution Control Standards; Opportunity for Public Hearing and Request for Public Comment**

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

**ACTION:** Notice of opportunity for public hearing and request for public comment.

**SUMMARY:** The California Air Resources Board (CARB), by letter dated October 4, 1999, requested that EPA confirm CARB's finding that amendments to its Small Off-Road Engine (SORE) Regulations are within-the-scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB's original SORE Regulations in July 1995. EPA has made the requested confirmation for many of the amendments in the CARB request and published this determination in an earlier FR notice. EPA also determined that other amendments in this CARB request were not within the scope of the prior authorization because these amendments are brand new standards. For this reason, EPA is announcing the opportunity for a public hearing on these specific amendments.

**DATES:** EPA has tentatively scheduled a public hearing for December 8, 2000, commencing at 9:30 am. Any person who wishes to testify on the record at the hearing must notify EPA in writing by December 1, 2000 that he or she will attend the hearing to present oral testimony regarding EPA's determination. If EPA receives one or more requests to testify, this hearing will be held. If EPA does not receive any requests to testify, this hearing will be canceled. Anyone who plans to attend the hearing should contact Robert Doyle by telephone or E-Mail (number and address below) to determine if this hearing will be held. Regardless of whether or not a hearing is held, any party may submit written comments regarding EPA's determination by or before December 22, 2000.

**ADDRESSES:** Parties wishing to present oral testimony at the public hearing should provide written notice to John Guy, Acting Manager, Engine Compliance Programs Group, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 501 3rd Street, NW., Washington, DC. Parties wishing to send written comments should provide them to Mr. Guy at the above address. EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The Air Docket is open during working hours from 8:00 a.m. to 4:00 p.m. at EPA, Air

Docket (6102), Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The reference number for this docket is A-2000-09.

**FOR FURTHER INFORMATION CONTACT:**

Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (U.S. mail), 501 3rd Street NW, Washington, DC 20001 (courier mail). Telephone: (202) 564-9258, Fax: (202) 565-2057, E-Mail: [Doyle.Robert@EPA.GOV](mailto:Doyle.Robert@EPA.GOV).

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Electronic Copies of Documents**

EPA makes available an electronic copy of this Notice on the Office of Transportation and Air Quality (OTAQ) homepage (<http://www.epa.gov/OTAQ>). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary website: (<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

**II. Background**

*(A) Nonroad Authorizations*

Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act allows the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).<sup>1, 2</sup>

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1).<sup>3</sup> The section 209(e) rule and its codified regulations<sup>4</sup> formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement that EPA cannot find "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.<sup>5</sup> In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.<sup>6</sup> California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to

permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.<sup>7</sup>

With regard to enforcement procedures accompanying standards, EPA must grant the requested authorization unless it finds that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 213(a), or unless the Federal and California certification test procedures are inconsistent.<sup>8</sup>

Once California has received an authorization for its standards and enforcement procedures for a certain group or class of nonroad equipment engines or vehicles, it may adopt other conditions precedent to the initial retail sale, titling or registration of these engines or vehicles without the necessity of receiving an additional authorization.<sup>9</sup>

If California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendment may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act, and raises no new issues affecting EPA's previous authorization determination.<sup>10</sup>

*(B) The SORE Amendments Request*

EPA granted California authorization for its SORE Rule by decision of the Administrator dated July 5, 1995.<sup>11</sup> The

<sup>7</sup> To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. See, e.g., 43 Fed. Reg. 32182 (July 25, 1978).

<sup>8</sup> See, e.g., *Motor and Equipment Manufacturers Association, Inc. v. EPA*, 627 F.2d 1095, 1111-14 (D.C. Cir. 1979), cert. denied, 446 U.S. 952 (1980) (*MEMA I*); 43 Fed. Reg. 25729 (June 14, 1978).

While inconsistency with section 202(a) includes technological feasibility, lead time, and cost, these aspects are typically relevant only with regard to standards. The aspect of consistency with 202(a) which is of primary applicability to enforcement procedures (especially test procedures) is test procedure consistency.

<sup>9</sup> See 43 FR 36679, 36680 (August 18, 1978).

<sup>10</sup> Decision Document for California Nonroad Engine Regulations Amendments, Dockets A-2000-05 to 08, entry V-B, p.28.

<sup>11</sup> 60 FR 37440 (July 20, 1995). The CARB small engine emission regulations were then called the

<sup>1, 2</sup> See 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, 85.1601-85.1606.

<sup>3</sup> As discussed above, states are permanently preempted from adopting or enforcing standards relating to the control of emissions from new engines listed in section 209(E)(1).

<sup>4</sup> See 40 CFR Part 85, Subpart Q, 85.1605.

<sup>5</sup> See FR 36969, 36983 (July 20, 1994).

<sup>6</sup> Section 209(e)(1) of the Act has been implemented, See 40 CFR Pt. 85, Subpart Q 85.1602, 85.1603.

SORE Rule, which applies to all gasoline, diesel, and other fueled utility and lawn and garden equipment engines 25 horsepower and under, with certain exceptions established two "tiers" of exhaust emission standards for these engines (Tier 1 from 1995 through 1998 model years, and Tier 2 for model year 1999 and beyond), as well as numerous other requirements. By letter dated October 4, 1999, CARB notified EPA that it had adopted numerous amendments to its SORE Regulations which were first approved at a public hearing on March 26, 1998. These amendments are the product of CARB's continuing reviews of industry efforts to comply with the requirements of the CARB nonroad program. The Board directed the CARB staff to review the industry progress in developing the technology required to comply with the Tier 2 standards, and to consider issues raised by the industry in this process. The staff recommended to the Board that the SORE regulations "be modified to reflect the realities of the small engine market and the technological capabilities of the industry."<sup>12</sup> These recommended amendments which CARB adopted consequently reduce compliance burdens on manufacturers while also "preserving most of the emission reductions—including most reductions in excess of comparable federal program—that U.S.E.P.A. previously authorized."<sup>13</sup>

In its request letter, CARB asked EPA to confirm the CARB determination that the amendments to the SORE regulations set forth in its request package are within the scope of the 209(e) authorization of the original authorization granted by EPA for the SORE Rule in July 1995. EPA has made such a determination for most of the regulation amendments included in the CARB request.<sup>14</sup> EPA also has determined, on the other hand, that one set of regulation amendments in this request cannot be considered within the scope of the previous authorization because these particular amendments set brand new, more stringent standards and therefore properly should be reviewed as a new authorization request. These amendments set useful

life standards for covered engines (where before there were none). Accordingly, EPA announces this opportunity for a public hearing on these new standards.

### III. Procedures for Public Participation

Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with John Guy Doyle at the address listed above no later than December 20, 2000. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until December 22, 2000. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at EPA Air Docket, in Docket No. A-2000-09.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures

set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 9, 2000.

**Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL 6904-4]

### Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that The Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB), will meet on December 12 and 13, 2000 at the One Washington Circle Hotel located at One Washington Circle, NW, Washington, D.C. The meeting will begin by 8:30 a.m. and adjourn no later than 5:00 p.m. Eastern Standard time on both days. The meeting is open to the public, however, seating is limited and available on a first come basis.

*Purpose of the Meeting*—The purpose of the meeting is to discuss the FY 2002 Agency Budget Process and Schedule as a prelude to the Committee's formal review of the Science and Technology (S&T) portion of that budget in February. The Committee will be briefed on the Agency's Science Plan and Inventory, and it will consider how to conduct the second phase of its review of the implementation of EPA's Peer Review Process. The Committee will also spend part of the meeting planning its activities for the next year.

*For Further Information*—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. John "Jack" R. Fowle III, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564-4547; FAX (202) 501-0323; or via e-mail at [fowle.jack@epa.gov](mailto:fowle.jack@epa.gov). Requests for oral comments must be in writing (e-mail, fax or mail) and received by Dr. Fowle no later than noon Eastern Standard Time on December 7, 2000.

Utility, Lawn and Garden Engine (ULGE) regulations. The new amendments, among other things, renamed the ULGE regulations as the SORE regulations.

<sup>12</sup> CARB Notice of Public Hearing with attached Staff Report, Docket A-2000-09, entry II-B-2, p. 2.

<sup>13</sup> Letter from CARB to EPA requesting within the scope confirmation for amendments to SORE Rule, dated October 4, 1999, Docket A-2000-09, entry II-B-1, p. 3.

<sup>14</sup> Decision Document for California Nonroad Engine Regulations Amendments, Dockets A-2000-05 to 08, entry V-B.