raise new issues affecting EPA’s previous waiver determinations? (3) If EPA were to consider CARB’s requests as a new waiver request, then provide comment on (a) whether California’s determination that its standards are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs separate standards to meet compelling and extraordinary conditions, and (c) whether California’s standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If a public hearing is held, 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 David Dickinson at the address listed above no later than December 23, 2005. 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 January 25, 2006. Upon expiration of the comment period, the Administrator will render a decision in part on a submission labeled (CBI). If a person making comments 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.

Elizabeth Craig,
Acting Assistant Administrator, for Air and Radiation.
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ENVIRONMENTAL PROTECTION AGENCY
[AMS–FRL–7994–9]
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 comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted an Airborne Toxic Control Measure (ATCM) establishing in-use performance standards for transport refrigeration units (TRU) and TRU generator sets that will be phased-in commencing on December 31, 2008. By letter dated March 28, 2005, CARB requested that EPA grant California authorization for such standards under section 209(e)(2) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) (EPA frequently calls such authorizations “waivers of preemption”). This notice announces that EPA has tentatively scheduled a public hearing concerning California’s request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB’s request on January 3, 2006 beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by December 16, 2005, expressing its interest in presenting oral testimony. By December 21, 2005, any person who plans to attend the hearing should call Robert M. Doyle at (202) 343–9258 to learn if a hearing will be held. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB’s request based on written submissions to the docket.

Any party may submit written comments by February 6, 2006.

ADDRESSES: 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 official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is OAR–2005–0123. Parties wishing to present oral testimony at the public hearing should provide written notice to Robert M. Doyle at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 343–9258, Fax: (202) 343–2804, e-mail address: Doyle.Robert@EPA.GOV.

EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality’s (OTAQ’s) 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 Web site: (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. Parties wishing to present oral testimony at the public hearing should provide written notice to Robert M. Doyle at: U.S. Environmental Protection Agency, 1200 Pennsylvania

Docket: An electronic version of the public docket is available through EPA’s electronic public docket and comment system. You may use EPA docket at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although a part of the official docket, the public docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the edocket system, select “search,” then key in the appropriate docket ID number.

SUPPLEMENTARY INFORMATION:

(A) Background and Discussion

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 of 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).2

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).3 The section 209(e) rule and its codified regulations4 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 and they are as follows:

(a) The Administrator shall grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement “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(a)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.5 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.6 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 reviews 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 he 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 procedures.7 CARB’s March 28, 2005 letter to the Administrator notified EPA that it had adopted an Airborne Toxic Control Measure (ATCM) on February 26, 2004 establishing in-use performance standards for TRUs and TRU generator sets. This regulation can be found at title 13, California Code of Regulations (CCR), division 3, section 2477.

Procedures for Public Participation

In recognition that public hearings are 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 February 6, 2006. Upon expiration of the comment period, the Administrator will render a decision on CARB’s request based on the record of the public hearing(s), if any, relevant written submissions, and other information that he deems pertinent. All information will be available for inspection at EPA Air Docket. (OAR–2005–0123).

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

5 See 59 FR 36969, (July 20, 1994), and regulations set forth therein, 40 CFR part 85, subpart Q, §§ 85.1601–85.1606.

6 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).

7 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 FR 32182 (July 25, 1978).
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.


Elizabeth Craig,
Acting Assistant Administrator, Office of Air and Radiation.

FOR FURTHER INFORMATION CONTACT: Kristy L. LaLonde, Office of Management and Budget, 1200 23rd Street, NW., Room 12123, 445 12th Street, SW., Washington, DC 20503, (202) 395–3087, or via fax at 202–395–5167 or via Internet at Kristy.LaLonde@omb.eop.gov, and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554. You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail, send them to: PRA@fcc.gov. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President’s Council on Bioethics on December 8–9, 2005

AGENCY: The President’s Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President’s Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its twenty-second meeting, at which, among other things, it will discuss ethical issues relating to children. Subjects discussed at past Council meetings (though not on the agenda for the present one) include: Cloning, assisted reproduction, reproductive genetics, IVF, ICSI, PGD, sex selection, inheritable genetic modification, patentability of human organisms, neuroscience, aging.