

Engine Parts Manufacturers; Motor Vehicle Body Manufacturers; Construction Machinery Manufacturers; Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturers; Military Armored Vehicle, Tank, and Tank Component Manufacturers; Other Engine Equipment Manufacturers; Other Motor Vehicle Electrical and Electronic Equipment Manufacturers.

*Estimated Number of Respondents:* 2.

*Frequency of Response:* Annual, quarterly and on occasion.

*Estimated Total Annual Hour Burden:* 1,178.

*Estimated Total Annual Cost:*

\$98,789, includes \$18,180 in O&M costs and no capital costs.

*Changes in the Estimates:* There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: October 1, 2008.

**Sarah Hisel-McCoy,**

*Director, Collection Strategies Division.*

[FR Doc. E8-23686 Filed 10-6-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8726-5]

### California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines; Within-the-Scope Request; Opportunity for Public Hearing

**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 amended or adopted emission standards and accompanying testing procedures for new nonroad compression ignition (CI) engines in two CARB rulemakings. By letter dated July 18, 2007, CARB submitted a request seeking EPA confirmation that its amendments affecting three broad power categories expressed in kilowatts (kW) (under 19 kW, 19 kW to under 130 kW, and 130kW and greater) are within the scope of previous authorizations issued by EPA under section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(e). In the alternative CARB seeks a new authorization for these standards. 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 November 6, 2008 beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by October 27, 2008, expressing its interest in presenting oral testimony. By November 3, 2008, any person who plans to attend the hearing should call David Dickinson at (202)343-9256 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 November 21, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0640, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- *Fax:* (202) 566-1741.

- *Mail:* Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2008-0640, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0640. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson 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 at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:**

David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. *Telephone:* (202) 343-9256, *Fax:* (202) 343-2804, *e-mail address:*

[Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

**SUPPLEMENTARY INFORMATION:**

*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 or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires 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</sup>

<sup>1</sup> Section 209(e)(1) states, in part: No State or and political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles used in farm equipment or vehicles and which are smaller than 175 horsepower. (B) New locomotives or new engines used in locomotives. EPA's regulation was published at 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, §§ 85.1601 *et seq.* A new rule, signed on

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). The section 209(e) rule and its codified regulations<sup>2</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 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(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.<sup>3</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>4</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 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. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that 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.<sup>5</sup>

CARB has submitted to EPA its 2000 Off-road Compression-Ignition Engine regulations adopted at its January 28, 2000 public hearing (these regulations codified and incorporated all new off-road CI emission standards and test procedures in division 3, chapter 9, article 4 of title 13, California Code of Regulations to include all California-certified 2000 and subsequent model year off-road CI engines) and its regulations adopted at its December 9, 2004 Board hearing (these regulations harmonized California’s standards and procedures with those promulgated by EPA in its Tier 4 rulemaking (69 FR 38958 (June 29, 2004) and EPA subsequent technical amendments at 70 FR 40420 (July 13, 2005)).

When EPA receives new authorization requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA usually publishes a decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA’s decision.

Although CARB has submitted a within the scope waiver request, EPA invites comment on the following

<sup>5</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 FR 32182 (July 25, 1978).

issues: whether California’s standards, within the context of a within the scope analysis (a) Undermine California’s previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California’s requirements with section 202(a) of the Act, and (c) raise new issues affecting EPA’s previous waiver determinations. Please also provide comment that if CARB’s standards were not found to be within the scope of previous waivers and instead required a full waiver analysis, whether (a) CARB’s determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California’s standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

EPA also invites comment on CARB’s suggestion to EPA that where CARB is harmonizing its standards with a more stringent federal standard then EPA should conduct a pre-determination hearing where interested parties have the opportunity to comment both on the appropriateness of using the within the scope mechanism and on the underlying authorization issues.<sup>6</sup>

#### 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 November 21, 2008. 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,

<sup>6</sup> See CARB’s authorization support document submitted on July 18, 2008 at p. 21.

September 4, 2008, moves these provisions to 40 CFR Part 1074.

<sup>2</sup> See 40 CFR Part 85, Subpart Q, § 85.1605. Upon effectiveness of the new rule, these criteria will be codified at 40 CFR 1074.105.

<sup>3</sup> See 59 FR 36969, 36983 (July 20, 1994).

<sup>4</sup> Section 209(e)(1) of the Act has been implemented, see 40 CFR Part 85, Subpart Q § 85.1602, 85.1603. Upon effectiveness of the new rule noted above, these permanently preempted categories will be codified at 40 CFR 1074.10, 1074.12.

relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as "Confidential Business Information" (CBI). If a person making comments want EPA to base its decision in part on a submission labeled CBI, then a non-confidential 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: October 1, 2008.

**Robert J. Meyers,**

*Principal Deputy Assistant Administrator,  
Office of Air and Radiation.*

[FR Doc. E8-23671 Filed 10-6-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8726-6]

### California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines—In-Use Fleets; Authorization Request; Opportunity for Public Hearing

**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 emission standards for fleets that operate nonroad, diesel fueled equipment with engines 25 horsepower (hp) and greater. By letter dated August 12, 2008, CARB submitted a request seeking EPA authorization, pursuant to section 209(e) of the Clean Air Act (CAA), 42 U.S.C. 7543(e), of its regulation requiring such fleets to meet fleet average emissions standards for oxides of nitrogen and particulate matter, or, alternatively, to comply with best available control technology

requirements for the vehicles in those fleets. 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 October 27, 2008, beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by October 20, 2007 expressing its interest in presenting oral testimony. 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 November 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0691, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- *Fax:* (202) 566-1741.

- *Mail:* Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2008-0691, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0691. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson 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 at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:**

David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. *Telephone:* (202) 343-9256, *Fax:* (202) 343-2804, *e-mail address:*

[Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

**SUPPLEMENTARY INFORMATION:**

*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 or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires 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</sup>

<sup>1</sup> Section 209(e)(1) states, in part: No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment